*** THE HON'BLE MR JUSTICE RAMESH RANGANATHAN**

+ WRIT PETITION NO : 25265 of 2000

% 06-06-2006

Smt.Rani Sundarammani
Petitioner

Vs.

$ Govt. of A.P. rep. by its
Respondent Secretary, Revenue Department and 3 others

! Counsel for the petitioner : Sri Challa Sitaramaiah

^ Counsel for respondents: Special Government Pleader

< Gist:

>Head Note

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[1] 1997(2) SCC 267
2 AIR 1970 SC 1975
3 AIR 1967 SC 1140
4 AIR 1980 SC 91
5 (2002)1 ALT 466
6 (2003)1 ALT 3
7 AIR 1967 SC 1269
8 1974(2) SCC 706
9 1990(1) SCC 440
10 AIR 1993 SC 880
11 1998(8) SCC 749

[12]2000(7) SCC 522
[13](1991)1 SCC 308
[14](1999)1 SCC 488
[15]1991 (Suppl) 2 SCC 228
[16](1976)3 SCC 160
[17](1997)1 SCC 156
[18](1989)3 SCC 612
[19](1996)6 SCC 223
[20](1996)11 SCC 257
[21](1998)2 ALT 623
[22](1964)2 SCC 706
[23](2005)2 SCC 689
[24](2002)3 ALT 168
[25](2002)3 ALT 389
[26](2004)3 ALT 371
[27](2004)4 ALT 498
[28]AIR 1962 AP 518
[29]1957 SCR 738
[30](1980)4 SCC 570
[31](1992)1 SCC 414
[32](1992)4 SCC 61
[33]1993(Suppl)1 SCC 306
[34](2000)6 ALD 376
[35](2002)3 ALT 739
[36](2003)4 ALT 611
[37](2003)5 ALT 143
[38](2003)6 ALT 307
[39](2004)3 ALT 221

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No: 25265 of 2000

ORDER:

1. The action of the respondents, in placing large extents of land in Yerranagavari Palle village and in paimash Nos.120 to 139 of Penubalakala hamlet in Chittoor District in the Prohibitory Book Register, is under challenge in this writ petition. Consequential directions are sought to implement G.O.Ms.No.439 dated 13.3.1957 and to include the name of the petitioner, in the revenue records, as the owner of these lands.

2. The facts, to the extent necessary, are that Punganoor Zamin estate was notified on 07.09.1950 and was finally taken over by the Government, under the A.P. Estates (Abolition and Conversion into Ryotwari) Act (Act 26 of 1948), on 22.07.1952. When the Zamin was notified and taken over a representation was submitted by the Zamindar to the government on 17.11.1952 stating that certain lands purchased by his ancestors more than 80

years before abolition of the Estate, and which were his personal property, did not form part of the "Estate". G.O.Ms.No.439 dated 13.03.1957 was issued by the Government wherein it was noted that, from out of the villages mentioned in the schedule to the petition of the Zamindar of Punganur, three villages i.e., Annagaripalle, Bonthavaripalle and Bharanipalle had been take over by the government under the Estates Abolition Act and the forests therein vested in the government. With regards the remaining 32 villages, the government agreed with the views of the Board of Revenue and considered that the claim of the landholder was untenable in all cases except in respect of the forest areas of Yerranagavaripalle village and those covered by paimash Nos.120 to 139 of Penubalakala hamlet. The government directed that all the forest areas situated in or near the 32 specified villages, except the forests of Yerranagavari Palle village and those covered by Paimash Nos. 120 to 139 of Penubalakala, shall be deemed to have vested in the government along with the main Punganur Zamindari with effect from 22.07.1952 (the date on which the said Zamindari was taken over by the government). The Director of Settlements was requested to include the forest revenue derived from all the forest areas referred to in the G.O, except the forests of Yerranagavaripalle village and Paimash Nos.120 to 139 of Penubalakala hamlet, in the computation of the basic annual sum relating to Punganur Zamin, if he had not already included it, and to revise the advance compensation, if necessary. The government also approved the proposal of the board of revenue regarding declaration of the forests and directed that the officers of the forest department should get the boundaries of the forests, in all the 32 villages, demarcated with chains so

that the survey staff could take up survey of the areas with the least possible delay and complete it expeditiously at the minimum cost. W.P.No.320 of 1957 was filed by the Zamindar seeking to have G.O.Ms.No.439 dated 13.03.1957 quashed. This Court held that the question, as to whether the land formed part of an estate, must be decided on a consideration of several documents which could not be done within the limited scope of writ proceedings under Article 226 of the Constitution of India. This Court considered that the just and equitable course, from the point of view of all parties, would be to refer the aggrieved party to a suit wherein he could adduce all available evidence and there would be a judicial consideration of all evidence adduced and findings would be arrived at which in their turn could be canvassed, if necessary, in a court of appeal, if not in more than one court. Having regard to the fact that this question could not be satisfactorily disposed of in a writ petition, this court directed that the petitioner should seek his remedies, if any, in a properly constituted suit. Without going into the merits of the contentions of the respective parties this court, by order dated 12.02.1958, dismissed the writ petition on this preliminary ground.

3. Sri A. Raja Reddy and 13 others, of Penubalakala hamlet of Peddakapalli village of Punganur Taluk, requested the Settlement Officer to grant a ryotwari patta in their favour for an extent of Ac.27.55 in Sy.No.210 and Ac.1605.70 in Sy.No.211 of Peddakapalli village. The Settlement Officer, Nellore, conducted an enquiry under Section 11(a) of the Estates Abolition Act. After a detailed consideration of the evidence, adduced on behalf of the petitioners and the respondents, the Settlement Officer, by order

dated 2.5.1970, ordered that ryotwari patta be granted in favour of Sri A. Raja Reddy and 13 others for an extent of Ac.381.00 and that the rest of the land be notified as assessed waste according to the existing classification in the village accounts.

4. Aggrieved by the order of the Settlement Officer, Nellore dated 2.5.1970, the respondent Sri S. Seshadri Naidu and other preferred R.P.No.94/70 before the Director of Settlements, Hyderabad. Against the very same order, Sri A. Raja Reddy preferred R.P.42/71 and the Collector preferred R.P.41/72. While these Revision Petitions were pending adjudication the government, in exercise of its powers under section 4 of the A.P. Forest Act, 1967, issued G.O.Ms.No.1427 dated 29.03.1972, proposing to constitute the land, within the boundaries specified in the schedule to the notification, as a reserve forest and to appoint a Forest Settlement Officer to consider objections, if any, and determine the existence, nature, and extent of any rights, claimed by or alleged to exist in any of the persons in, or over, any land comprised within such limits or to any forests in such land and to deal with the same as provided in Chapter II of the Act.

5. The petitioner herein filed an affidavit, sworn to on 01.08.1972, before the Director of Settlements, stating that she and her sons were interested in the proceedings, that the matter had been proceeded without impleading them as parties, without notice to them and without their knowledge, that on learning about the pendency of the proceedings she was advised that she should implead herself in the matter and submit her case to safeguard her interests and the interests of other heirs of the late Zamindar of Punganur. The petitioner requested, the Director of Settlements,

Hyderabad, that she and the other petitioners, i.e., the sons and daughters of the Ex-Zamindar, be impleaded as parties to the proceedings, i.e. R.P.No.94/70 and batch.

6. On 11.04.1975 the petitioner herein, as an individual, submitted a declaration under Section 8(1) of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973. The said declaration makes no reference to her ownership of the lands in Yerranagavaripalle village or those in Paimash Nos.120 to 139 of Penubalakala hamlet. The Land Reforms Tribunal, Madanapalle, in C.C.No.883/PGN/75 dated 10.05.1976, held that since the declarant was an individual, she was entitled to hold one standard holding and, since the total standard holding held by her was more than the ceiling area under Section 4(1) of the Act, it was determined under Section 9 of the Act that the declarant held 0.0534 standard holding of land in excess of the ceiling area on the notified date i.e., 01.01.1975.

7. The Director of Settlements heard all the three Revision Petitions i.e., R.P.Nos.94/70, 42/71 and 91/72, together and took note of the fact that the petitioner herein had also filed a representation against the grant of patta. After taking note of several contentions, including the contentions advanced by the counsel who appeared on behalf of the petitioner herein, the Director of Settlements, in his order dated 08.04.1976, held that the grant of patta by the Settlement Officer was based upon documents which were patently bogus and that the entire case bristled with shady deals and fabrications aimed at swallowing huge extents of government land. The Director of Settlements cancelled the pattas granted by the Settlement Officer, Nellore, in favour of Sri A. Raja Reddy and 13 others, in respect of the first

set of lands of Ac.381-00, and directed that they be placed at the disposal of the government. In view of the detailed analysis, of the documentary evidence produced by the Settlement Officer, Nellore, the Director of Settlements held that the claim of the petitioner in R.P.42/71 could not be sustained and was accordingly rejected. With regards the second set of lands, relating to the extent of Acs.1145.35, which the Settlement Officer had himself rejected, the Director of Settlements confirmed the order of the Settlement Officer.

8. Aggrieved by the order of the Director of Settlements, Sri A. Raja Reddy filed a revision petition before the Board of Revenue and in as much as the Board, in its order dated 24.05.1976, declined to grant stay of the order of the Director of Settlements, he filed W.P.2075/76 before this Court. This Court, by order dated 06.10.1976, dismissed the writ petition holding that it was for the Board of Revenue, in its discretion, to decide as to whether to grant stay or not and that this Court would be reluctant to entertain a writ petition against an interlocutory order, refusing to grant stay, while the revision was still pending before the Board of Revenue. The Board of Revenue was directed to dispose of the revision as expeditiously as possible.

9. The Commissioner of Survey, Settlement and Land Records, Hyderabad, heard the revision petition, filed by Sri A. Raja Reddy and others, under Section 7(d) of the Estates Abolition Act, 1948, against the common order of the Director of Settlement, Hyderabad in R.P.No.94/70 & batch dated 08.04.1976. The Commissioner, after perusing the connected records and on considering the arguments, by order dated 23.09.1982, held that the Director of Settlements had examined all aspects in detail in

an analytical manner, had given cogent reasons for rejecting the claim of the petitioner for grant of patta and that the order of the Director of Settlement was a well augmented document calling for no interference. The order of the Director of Settlement was confirmed and the revision, filed by Sri A. Raja Reddy and others, was rejected as being devoid of merits.

10. After the revision petition had been dismissed, the petitioner herein submitted a representation to the Chief Secretary, Government of A.P. On receipt of the said representation, which was forwarded to him, the Chief Conservator of Forests informed her, vide letter dated 03.11.1982, that the areas of Erranaguvaripalli village were not covered by reserve forest.

11. Sri A. Raja Reddy filed W.P.8368/82, before this Court, against the order of the Commissioner of Survey, Settlements and Land Reforms. This Court, by order dated 28.12.1987, set aside the order of the Commissioner, passed in Revision on 23.09.1982, and remanded the matter for consideration afresh.

12. During the pendency of the revision petition, before the Commissioner, the Divisional Forest Officer, vide letter dated 15.07.1997, informed the Mandal Revenue Officer that, as per the instructions of the government in memo dated 31.03.1997 and as instructed by the government on 17.06.97, the forest block of Avulapalle was notified under Section 4 of the A.P. Forest Act, vide G.O.Ms.No.1427 dated 29.03.1972, and that the land in Avulapalle forest block included the land in Sy.No.211 of Peddakapalli village. The M.R.O. was requested to enter the particulars in the prohibitory order book. The District Collector, vide proceedings dated 31.07.1997, requested the M.R.O to enter the said lands in the Prohibitory Order Book of his Mandal and to

intimate this fact directly, to the Divisional Forest Officer (West) Chittoor, under intimation to the Collector.

13. The Commissioner of Survey, Settlements and Land Revenue, Hyderabad, pursuant to the Revision Petition filed by Sri A. Raja Reddy being remanded by this Court on 28.12.1987, took note of the fact that, at the time of inspection by the Dy.Tahsildar, Chittoor on 08.06.1967, the claimed land was a big block of forest, there were no ridges or any manner of demarcation showing enjoyment of each individual, that the same was the position on 11.06.1966 when location work was taken up by the Ex-Circle Office, Chittoor and Taluk Surveyor along with the Tahsildar, Punganur and that it was found not to be ryoti land. The Commissioner, by his order dated 22.06.1998, dismissed the revision petition filed by Sri A. Raja Reddy. A copy of the order passed by the Commissioner was communicated vide proceedings dated 02.07.1998

14. The Petitioner herein submitted a representation on 14.09.1998 to the Collector bringing to his notice that, under Section 68 of the Estates Abolition Act, the government was empowered to issue lawful instructions necessary for implementation of the provisions of the Estates Abolition Act. While drawing attention of the Collector, to the proceedings in G.O.Ms.No.439 dated 13.03.1957, the petitioner stated that her right to these forest areas must be deemed to have been recognized under Section 20(1) read with Section 68 of the Estates Abolition Act and as such the area had to be demarcated and the petitioner's name included as its owner in the revenue records of these areas. The petitioner stated that these forest areas were situated outside the reserve forest and the Forest

Department had no control over it since the areas were private forests of the Ex-Zamindar. The petitioner requested that the various areas in yerranagavaripalli village, those covered by paimash Nos.120 to 139 lying in Pedda Panjani Revenue Mandal be demarcated and included in the revenue records of the respective villages as patta lands in the name of the petitioner, the legal heir of the Zamindar.

15. The Revenue Divisional Officer, in his report dated 16.04.1999, informed the District Collector that, under G.O.Ms.No.439 dated 13.03.1957, no ryotwari patta was granted to the zamindar, that the forest areas covered by paimash Nos.120 to 139 were not taken over by the government and that the Forest Department had been ordered to get the boundaries of the forest surveyed including the forest covered by paimash Nos.120 to 139 of Penubalakala hamlet. The R.D.O further stated that, after survey, no ryotwari patta was granted to the petitioner for the above lands and hence the petition deserved no consideration. The R.D.O. requested that a suitable endorsement be issued in this regard to the petitioner. The office of the District collector, in its endorsement dated 03.06.1999, informed the petitioner herein that an enquiry was conducted on her representation dated 14.09.1998 to enter her name in the revenue records of the lands in Sy.No.211 of Peddakapalli village, that the R.D.O, Madapanalli and M.R.O in their reports dated 16.04.1999 and 10.02.1999 respectively, had stated that an extent of Ac.1274.70 in Sy.No.211 of Pedakapalli village was in the possession of the forest department and had been entered in the prohibitory order book register and that, as ryotwari patta was not

granted to the applicant, it was not possible to enter her name in the village accounts.

16. The petitioner submitted another representation to the Collector on 30.06.1999 informing that, according to G.O.Ms.No.439 dated 13.03.1957, the areas which were not taken possession of by the government, along with the main estate, were left to the control of the ex-zamindar and hence the provisions of the Estates Abolition Act did not apply to areas which were the private property of the Ex-Zamindar and there was no need to get a ryotwari patta for these areas. The petitioner submitted that only demarcation and inclusion of the areas in the revenue records remained to be done by the revenue department. She requested that the forest areas in Yerraganganapalli village and those covered by paimaish Nos.120 to 139 of Penubalakala hamlet, lying in Sy.No.211 of Peddakapalli village, be demarcated and included in the revenue records of the respective villages as patta lands in her name as she was the legal heir of the late Ex-Zamindar.

17. The M.R.O., vide proceedings dated 07.02.2000, informed the District Collector that he had verified the Punganur erstwhile taluk record room and that the pre-abolition records in respect of paimaish Nos.120 to 139 of Penubalakala hamlet were not traced out. While informing that certain other records had already been submitted to the Collector of Chittoor District, the M.R.O stated that the entire Penubalakala hamlet of Peddakapally village was notified and had been taken over by the government on 22.07.1952 as per the notification issued under Section 1(4) of the Estates Abolition Act 1948, but as per G.O.Ms.No.439 dated 13.03.1957, the government had clarified and directed the authorities that all the forest areas situated in or around the 32 village specified in the

G.O, except the forest of Erranaguvaripally and those covered by Paimaish Nos.120 to 139 of Penubalakala, be deemed to have been vested with the government along with Punganur Zamindari with effect from 22.07.1952, on which date the said zamindari was taken over by the government. The M.R.O stated that the forest areas of Erranaguvaripally were not covered by the notification issued under Section 1(4) of the Estates Abolition Act and did not vest in the government. While informing that the notification was not available in the office, the M.R.O stated that the lands had already been located and surveyed as Sy.No.210 and 211 measuring an extent of Ac.27.05 and Ac.1605-70 respectively. The Collector was requested to take necessary action in this regard. The Collectorate, in its endorsement dated 17.05.2000, informed the petitioner that she had earlier been given endorsement dated 03.06.1999, in response to the petition submitted by her earlier, informing that her request for implementation could not be considered in view of the entry of the lands in prohibitory order book.

18. According to the petitioner, the lands claimed by her as her personal property, were not included in the notification issued in G.O.Ms.No.1427 dated 29.03.1972. Petitioner would refer to the recitals in G.O.Ms.No.1427 dated 29.03.1972 wherein it is stated that the boundary line runs generally towards west excluding P.No.86 of Ronanda village and SN-211 of Peddakapalli village from station 127 to 159, on the basis of survey and demarcation done by the survey party, North West Range, Chittoor as per G.O.Ms.No.439 dated 13.03.1957, and thence the boundary line runs generally westwards along with the northern boundary of Annamgaripalli block upto station No.175 with the bearings and

distances mentioned therein. According to the petitioner the numbers shown, in columns 1 and 2 of G.O.Ms.No.1427 dated 29.04.1972, are station numbers and not survey numbers, the 3rd column is in respect of degrees and the 4th column is the distance in links. Petitioner would refer to the letter of the Divisional Forest officer, dated 15.07.1997, to contend that areas notified as reserve forest could alone be entered in the Prohibitory Order Book Register. According to the petitioner, since the notification in G.O.Ms.No.1427 dated 13.03.1957 excluded Yerranagavaripalli village and the forest areas in Paimash Nos.120 to 139 of Penubalakala hamlet of Peddakapalli village, the said notification was in accordance with G.O.Ms.No.439 dated 13.03.1957. Petitioner would refer to the proceedings of the Revenue Divisional Officer dated 16.04.1999 and contend that the question of making an application for being granted ryotwari patta would arise only in cases where the lands, for which such a patta is sought for, are vested in the government on abolition of an estate and not where the lands form part of the personal property of zamindar and have been specifically excluded from the "Estate" taken over by the government under the provisions of the Estates Abolition Act. Petitioner would contend that the action of the respondents, in placing these lands in prohibitory order book register, without notice to her and without giving effect to G.O.Ms.No.439 dated 13.03.1957, was wholly illegal, *ultra vires*, opposed to the provisions of the Estates Abolition Act and in violation of principles of natural justice. According to the petitioners, the forest lands of Yerranagavaripalle village and the land in Paimash Nos.120 to 139 of Penubalakala hamlet, were her personal property, these lands

did not vest in the government on the abolition of the Estate, the government in calculating the compensation did not take the revenue from these lands into account, the lands were not notified under Section 4 of the A.P. Forest Act and therefore the respondents could not lay claim on these lands and deprive the petitioner of her property. Petitioner would contend that the notification, under the Forest Act, would state that the boundary line was fixed excluding Sy.No.211 of Peddakapalli village as per G.O.Ms.No.439 dated 13.03.1957 and, inasmuch as Paimash Nos.120 to 139 of an extent of Ac.27.05 was found to be located in Sy.No. 210 and Ac.1605.70 in Sy.No.211, these lands could have been entered in the prohibitory order book only if these areas fell within the Reserve Forest. Since these lands were admittedly not within the Reserve Forest, and the Conservator of forest on 03.11.1982 had clearly stated that Yerranagavaripalle village was not covered by the notification under the Forest Act, these lands could not have been entered in the Prohibitory Order Book. According to the petitioner, the Settlement Officer could only adjudicate on the rights of claimants, for being granted ryotwari patta, in respect of lands vested in the government, on the abolition of the Estate, and since the land claimed by the petitioner did not form part of the estate, and had been accepted by the government as the petitioner's personal property, it was not open to the respondents to retain control of the said lands contending that they were forest lands, for it would then amount to depriving the petitioner of her property without payment of compensation. Petitioner would contend that the government and its departments were acting like ordinary litigants driving her from one authority to another, that it is only when the District Revenue Officer, in his

letter dated 03.06.1999, informed that these lands formed part of the forest areas and were in possession of the forest department, did the petitioner come to know that these lands were included in the Prohibitory Order Book Register. The petitioner would question the action of the respondents in treating the lands as forest lands and in placing them in the Prohibitory Order Book as illegal and opposed to G.O.Ms.No.439 dated 13.03.1957. She would contend that the method and procedure adopted by the respondents in placing these lands in the Prohibitory Order Book Register, without making any enquiry and without giving an opportunity to the petitioner of being heard, was wholly illegal, *ultra vires* and in violation of principles of natural justice.

19. On behalf of respondents 1 to 3 Sri S.S. Rawat, the then District Collector, Chittoor, filed counter affidavit, which was sworn to and signed on 29.08.2004. He would submit that an extent of Ac.1605.70 cts in Paimash Nos. 120 to 139 co-related to Sy.No. 211 and an extent of Ac.27.65 cts, in Sy.No. 210 of Penubalakala village is covered by forests, that the government is in possession of these lands and these lands have been shown in the revenue records as assessed waste from the time of survey i.e., from 1957-59. It is stated that the District Forest Officer submitted a report to the Collector, Chittoor vide proceedings dated 15.07.1997 stating that the land in Sy.No. 211 of Peddakkapalle village is located in Forest area blocks and that the same is notified under Section 4 of the A.P. Forest Act. Respondents would state that the District Forest Officer had requested the District Collector, Chittoor to enter Sy.No. 211 in P.O.B. register and accordingly the Collector, Chittoor issued instructions to the M.R.O. Peddapanjani, vide letter dated 31.07.1997, to enter the said lands in the P.O.B.

register so that these lands may not be assigned for the purpose of cultivation. It is stated that in order to prohibit assignment of these forest lands, they were entered in the Prohibitory Order Book, and that the letter issued by the Conservator of the Forests on 03.11.1982 would not confer any title on the petitioner over the lands nor could any claim be made placing reliance on such a letter. Respondents would submit that the petitioner had abandoned her rights, if any, over the land in question after 1972, that the land was also liable to be surrendered under the A.P. Land Reforms (Ceiling and Holdings) Act 1973, that the government is in possession of the lands and even otherwise, it has perfected its title by adverse possession, being in possession continuously and openly as an owner atleast from 1959 and that the petitioner had not shown these lands in the declaration filed by her under the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act 1973. It is stated that after filing an implead petition on 01.08.1972, in Revision Petition No. 41 of 1974, she did not take any further interest in the lands till 1998. Respondents would contend that the land has been classified as assessed waste dry (Adavi) in the Survey Land Records (Fair Adangal), that it is situated in a forest area, that it has rightly been placed in the Prohibitory Order Book in order to prohibit assignment of the said lands and that there is no obligation on the part of the respondents to inform the petitioner, before including these lands in the Prohibitory Order Book, as the lands are in the Forest area and belong to/vest in the government. It is stated that by mistake the then divisional forest officer had filed an incorrect affidavit and that the error has since been corrected by his successor after proper enquiry. According to the respondents, these lands fall in the reserve forest area of

Penubalakala village, are “forests” under the Forest Conservation Act, that the provisions of the said Act are applicable to these lands, that it is the duty of the government to protect these forest lands and as observed by the Hon’ble Supreme Court, in **T.N. Godavarman Thirumulkpad Vs. Union of India**[1], the provisions of the Forest Conservation Act would apply to all Forests irrespective of ownership or classification and since the petitioner’s claim of ownership was of forest lands it was liable to be rejected. Respondents would state that a team of officials of the Forest Department and Revenue Officials had recently conducted an enquiry to identify and demarcate the land in question, that the joint inspection revealed that the lands claimed by the petitioner, in Sy.No. 211 of Penubalaka village, correlated to paimaish Nos.120 to 139, and fell inside the reserve forest area to the extent of about Ac.1175.00 cts except an extent of nearly Ac.100.00 falling outside the reserve forest and that this extent of Ac.100.00 cts of land has been presently encroached upon by a number of persons.

20. Another counter-affidavit was filed by the then District Collector, Chittoor on 04.09.2004 wherein it is stated that the counter-affidavit prepared in this writ petition earlier, was based on the legal advise on the effect of A.P. (Andhra Area) Estate (Abolition Conversion into Ryotwari) Act, 1948, but the said counter-affidavit was however not filed in Court. The 2nd respondent would state that, on further legal advise, he was advised that the legal inferences drawn earlier required reconsideration. Respondents would state the lands were duly surveyed under the Survey and Boundary Act in 1957-58 and were

shown to be government lands (Adavi), that the land is covered by forests and is under the possession of the government atleast from 1959, that the lands were not declared by the petitioner, in the declaration filed by her under the A.P. Land Reforms (Ceiling on Agriculture Holding) Act 1973, and that he had therefore sworn to this counter-affidavit on 29.08.2004 and had filed the same before this Court in this writ petition.

21. Sri Kallol Biswas, the Divisional Forest Officer, Chittoor filed an additional counter-affidavit, affirmed to on 12.03.2004, wherein he stated that a counter-affidavit had been filed earlier, affirmed to on 19.06.2001 on behalf of the 4th respondent on the basis of inaccurate information and that too without verifying the ground position, and that they were advised to file an additional counter-affidavit to bring to the notice of this Court the correct facts which were relevant for the purpose of the writ petition. It is stated that a joint inspection had been undertaken by a team consisting of Forest and Revenue Officials in respect of the area covered under Sy.Nos. 211 of Peddakapalle, claimed to be the personal property of the petitioner and that, on the basis of the joint inspection, the boundaries of the reserve forest area had been fixed from Survey Station No. 143 to 114 and that the survey revealed that the lands claimed by the petitioner were falling mostly inside the Reserve Forest to an extent of Ac.1175.00 cts except for a small extent of Ac.100.00 cts falling outside the Reserve Forest and that a map in this regard was enclosed along with the affidavit.

22. In her reply affidavit, the petitioner would state that the lands covered by paimaiash Nos. 120 to 139 relating to Sy.No.211 was part and parcel of the Punganur Zamindari and that it is located and forms part of Penubalakala forest. She would state that these

were the personal property of the Zamindar, that the government had accepted the claim of the Zamindar to the area of Yerranagavaripalli and the areas covered by paimash Nos. 120 to 139 of Penubalakala village. It is admitted that W.P.No. 320 of 1957 was filed questioning G.O.Ms.No. 439 dated 13.03.1957 which, according to the petitioner, was only in relation to claims other than those included under G.O.Ms.No. 439 dated 13.03.1957. The petitioner would submit that in the said writ petition, the parties were permitted to agitate the question in a regularly constituted suit but that no suit was filed questioning the said G.O.

23. At the court's request, Sri Challa Sitaramaiah, learned Senior Counsel, submitted a detailed note on the Zamindari Abolition system. Learned Senior Counsel, in his usual fair and forthright manner, traced the history and made a detailed analysis of the various provisions of the Estates Abolition Act. Learned senior counsel would submit that Act 26/48 abolished the Zamindary system and that all estates, governed by the Madras Estates Land Act 1908, were acquired and the lands therein converted into ryotwari settlements, that on its being notified under Act 26/48 the entire estate vested in the Government free from all encumbrances, that the permanent regulations of 1802 and the Madras Estates Land Act, 1908 etc, stood repealed and that the grant or sanad ceased to be operative. Learned Senior Counsel would submit that under clause 2 of the 1802 Regulations, the proprietary rights in the soil vested in the zamindar and under clause 3 a sanad or deed of permanent proprietary right was granted to the zamindar who had to pay permanent assessment and if he failed to pay his personal property was liable to be

attached and sold. The zamindar had to enter into an agreement, with the ryots, defining the amount to be paid to him. Once the grant was revoked whatever was granted under the sanad stood reverted to the government.

24. Learned Senior Counsel would submit that a zamindar could possess land within the grant (Sanad) called private land [Section 3(10) of the Estates Land Act]. He could possess and own land outside the grant i.e., land not covered by the permanent settlement. According to the Learned Senior Counsel, on abolition of the estate, only the land covered by the grant vested in the government and in respect of such lands, the zamindar could claim ryotwari patta under Sec. 12, 13 & 14 as the case may be if it was private land, (as distinguished from ryoti land), and compensation for the rest of the property that stood vested in the government.

25. In his written submissions, while furnishing the list of dates, learned Senior Counsel would submit that the Punganur Zamindari, an impartiable Estate, was abolished and taken over by virtue of the notification dated 27.02.1952 and that, under Section 3(b) of Act 26 of 1948, the estate vested in the Government including waste lands and forests. Learned Senior Counsel would submit that on a petition filed by the Zamindar, on 20.08.1952, claiming ownership of the areas covered by forests in 35 villages, the government directed the Board of Revenue to enquire into the matter under Section 7 and submit a report. The report submitted by the Board of Revenue was accepted by the government and the petitioner's claim of ownership, in respect of the forest areas in Yerranagavaripalli, and those covered by paimash numbers 120 to

139 of Penubalakala village, was accepted. The government issued directions to the forest department to exclude these areas and to the Director of Settlements to exclude the income therefrom. Learned Senior Counsel would submit that the government was not conferring ownership rights on the Zamindar, that it had accepted that the forest lands mentioned in the G.O. did not vest in the government on the abolition of the estate and that whatever rights the Zamindar had, prior to the abolition of the Zamindari, continued to exist.

26. According to the learned Senior Counsel the notification dated 29.03.1972, issued by the forest department, excluded the lands in Sy.No. 211 of Peddakapalli village from station 127 to 159, and this obvious fact was accepted by the Chief Conservator of Forests in his proceedings dated 03.11.1982. Learned Senior Counsel would submit that the facts, stated in the letters from the D.F.O to the M.R.O on 15.07.1997 and the District Collector to the M.R.O. on 31.07.1997, are basically wrong, as these lands were excluded from the notification issued under Section 4 of the A.P. Forest Act, in accordance with G.O.Ms.No. 439 dated 13.03.1957. Learned Senior Counsel would submit that these forest lands did not vest in the government, that the forest areas claimed by the petitioner is not part of the Zamindari, that it was not private lands within the Zamindari, that these lands are the Zamindar's personal property and that pattas are claimed either under Section 11 or under Sections 12 to 14 only in respect of the lands vested in the government and which form part of the Zamindari. In so far as the directions of the Settlement Officer, while considering the claim of Sri A. Raja Reddy and others, to enter these areas in the revenue records as assessed waste, is concerned learned Senior Counsel

would submit that, since the Settlement Officer had to act in accordance with the provisions of the Act i.e. only in respect of lands which vested in the government, he had exceeded his jurisdiction in giving such directions and that, in any event, this direction was set aside by the Commissioner, who held that this was a big forest block. According to the Learned Senior Counsel since the order of the Settlement Officer is without jurisdiction, and is a nullity, it must be ignored. Learned Senior Counsel would submit that this land is the personal property of the Zamindar and, soon after the litigation ended on 22.06.1998, the petitioner had submitted representations to the District Collector on 14.09.1998 and 30.06.1999. Insofar as the M.R.O's report dated 07.02.2000 is concerned, learned Senior Counsel would submit that the M.R.O. had verified from the records and had submitted a report to the Collector. Learned senior Counsel would submit that since the petitioner had prayed for a direction that G.O.Ms.No. 439 dated 13.03.1957 be implemented and that her name be entered in the village accounts, this Court was not adjudicating disputed questions of fact nor was any investigation of facts necessary in this case and since the facts were available on record, the petitioner's request to enter her name in the revenue records should be granted. Learned senior counsel would submit that since these were denied on the basis of irrelevant facts, and facts which were contrary to government orders and notifications, a writ should issue to the respondents to enter the petitioner's name in the village records as the owner of the subject land in question. Learned Senior Counsel would place reliance on **(1) Krishna v. Sarvagna Krishna**[2], **(2) Gandi Ramamurty v. State of A.P.**[3],

(3) State of Gujarat v. Gujarat Revenue Tribunal[4], **(4) Sajana Granites v. Manduva Srinivasa Rao**[5], **(5) B.G. Laxman v. Joint Collector**[6] **(6) State of Orissa v. Binapani Dei**[7], **(8) Babubhai Muljibhai Patel v. N.K.Balot**[8], **(9) Hiraji Tolaji Bagwan v. Shakuntala**[9], **(10) Karam Singh v. Collector, Kurukshetra**[10] **(11) State of A.P. v. Merti Enterprises**[11], **(12) Shama Prashant Raje v. Ganpat Rao**[12].

27. Learned Special Government Pleader, appearing on behalf of the respondents, in his written submissions, would submit that though the petitioner appeared before the Director of Settlements, she had chosen not to question the orders of the Director of Settlements dated 08.04.1976 before the Commissioner, nor did she take steps to question the orders of the Commissioner and as such she had abandoned her claim, over the lands, after 1972. He would contend that the lands in question are continuously in the possession of the government, from the date of the initial notification under the Estates Abolition Act, are lying in the Reserve Forest Area covered with contiguous forest blocks and that the District Collector had, therefore, rejected the petitioner's representation, vide endorsement dated 03.06.1999. Learned Special Government Pleader would contend that, as the said lands were classified as assessed waste (dry) and in the fair Adangal (Survey and Land Records) it was shown as Adivi situated in the forest area, in order to prohibit assignment of the said lands in favour of third parties, the land was rightly included in the Prohibitory Order Book with a view to protect the forest. Learned

Special Government Pleader would submit that these lands fall within the definition of “forests” under the Forest Conversation Act and it is the duty of the Government to protect these forests and to comply with the directions of the Supreme Court in **T.N. Godavarman Thirumulkpad**[1], irrespective of its ownership or classification. Reference is made to the joint inspection, conducted by officials of the Forests and Revenue Departments, as per which the lands in Sy.No.211, correlating to Paimash Nos.120 to 139, fall inside the Reserve Forest, (surrounded by the Reserve Forest), and the remaining small extent of land, lying outside the Reserve Forest Area, are under encroachment. It is contended that with a view to prevent further encroachment, on the subject land, the revenue authorities had taken a decision to enter them in the Prohibitory Order Book in order to safeguard the lands, as well as the forest existing therein, in compliance with the directions of the Supreme Court.

28. The statutory provisions of the A.P. Estates (Abolition and Conversion into Ryotwari) Act are detailed in the written submissions. It is stated that, in the statutory environment under Act 26 of 1948,, the landholder, irrespective of the nature of the land, under Sections 12, 13 and 14, depending on the nature of the Estate, has to get a ryotwari patta, for determination of his entitlement to the land, in accordance with Section 11 of the Act.

29. Learned Special Government Pleader would contend that, in the instant case, the Zamindar moved an application on 20.08.1952 before the District Collector for exclusion of 32 villages on the ground that the said 32 villages are his private forests and are liable to be excluded from the Estate. The then District Collector, after examining the same, forwarded it to the Board of

Revenue with his opinion stating that all the lands, after abolition of the estate, would vest with the Government and the lands claimed by the Zamindar as his private property was no exception. However, the Revenue Board again called for remarks from the Office of the Collector, Chittoor, as well as the then Government Pleader and took a decision excluding two villages viz., Yerranagavaripalle and Paimash Nos.120 to 139 of Penubalakala village, by its order dated 10.07.1956, which ultimately resulted in G.O.Ms.No.439 dated 13.03.1957 being issued excluding the above said two villages. It is contended that, while issuing the said G.O, the procedure contemplated under the Estates Abolition Act was not followed and that the District Collector, who had no role under the Act, had made a reference to the Board and the Board of Revenue, after getting remarks from the Collector as well as the then Government Pleader, had rendered its opinion excluding these two villages. As the procedure followed by the District Collector as well as the Board of Revenue was not as contemplated, under the provisions of the Estates Abolition Act, the very issuance of G.O.Ms.No.439 dated 13.03.1957 is contrary to the provisions of the Act and must be ignored. With regards the contention that the Settlement Officer was not vested with the power to classify the lands as assessed waste, learned Special Government Pleader would submit that the Settlement Officer never classified the land as assessed waste but had only stated so in his order based on the existing classification in the village accounts. According to the learned Special Government Pleader, as a consequence of the notification under the Estates Abolition Act, the entire Estate, including the assets of the Zamindari Estate, stood transferred to the government and vested in them

free from all encumbrances. Once a notification is issued, irrespective of its nature, all lands vest in the Government and if any person has any claim over the property, he shall have to make an application before the Settlement Officer in accordance with the procedure laid down under Sections 12, 13 and 14 of the Act and if the said land is forest land in accordance with Section 63 of the said Act. Alternatively, the learned Special Government Pleader would submit that, even if it is admitted that the lands are the personal property of the Zamindar and the petitioner need not approach the Settlement Officer, the conduct of the petitioner, in having kept quiet from 1957, without making any attempt to claim the lands as her personal property and only after the proceedings initiated by Sri A. Raja Reddy and 13 others before the Commissioner of Survey Settlement and Land Records had concluded, had she raised a claim, was ground enough to reject her claim on the ground of latches. Learned Special Government Pleader would submit that the petitioner and her sons got themselves impleaded, before the Director of Survey and Settlements, and invited an order that all the lands, including those lands for which a ryotwari patta was granted earlier in favour of Sri A. Raja Reddy, vested in the Government. She allowed the said order of the Director of Settlements to become final and had not chosen to question the same by way of revision before the Commissioner. It is stated that the revision preferred by Sri A. Raja Reddy was dismissed, confirming the order of the Director of Settlement, and since the proceedings had become final, the petitioner could not turn around and state that she still had a right over the property. According to the learned Special Government

pleader, the petition schedule areas were surrounded by reserve forest, that a contiguous block of thick forest was in the possession of the Forest Department since the abolition of the Estate, that the petitioner, or her predecessors, never evinced any interest in the land and for the first time in the year 1998, she had requested the revenue authorities to include her name in the revenue records as a pattedar, but since the land was notified under Section 4 of the A.P. Forest Act and was classified as assessed waste (dry), in order to protect the forest existing on the said land, and in view of the law laid down by the Apex Court under the Forest Conservation Act, these lands were entered in the Prohibitory Order Book. Learned Special Government Pleader would submit that it is evident from the records that the said forest lands are under the administrative control of the forest department and that sanction was also granted by the Board of Revenue for additional staff to administer the said forest. Reference is made to W.P.No.320 of 1957, filed by the petitioner's husband, questioning the validity of G.O.Ms.No.439 dated 13.03.1957 and that this Court, while dismissing the said writ petition, had observed that the issues which were required to be adjudicated by this Court involved disputed questions of fact and the petitioner was directed to seek his remedies in a properly constituted suit. Learned Special Government Pleader would state that neither the petitioner in W.P.320 of 1957 nor the petitioner herein had chosen to avail the remedy of filing a suit in respect of the other villages. The petitioner had neither made any effort to claim the land in question nor had she acted upon it till the disposal of the revision before the Commissioner of Survey and Settlement of Land Records on 22.06.1998. Learned Special Government Pleader would also

state that the petitioner filed an implead application in the revision petition filed by Sri A. Raja Reddy and the government, against the orders of the Settlement Officer, Nellore, and in her pleadings before the Director of Survey and Settlement she never asserted her title over the property and she only stated that she had some interest in the property, that the petitioner was represented by her counsel before the Director of Settlement and after giving ample opportunity, the claim of the petitioner was negatived. It is contended that, after disposal of the revision petition filed before the Director of Settlements, the petitioner had kept quiet and subsequently the matter went before the Commissioner of Survey and Settlement and final orders were passed on 22.06.1998 and that, only after conclusion of the proceedings before the Commissioner of Survey and Settlement, the petitioner had come up with a request to the District Collector on 14.09.1998 to implement G.O.Ms.No.439 dated 13.03.1957, after a lapse of more than four decades. It is contended that neither the notification under the Forest Act, nor the alleged communication from the Officials of the Forest Department stating that the said land is situated outside the forest or is excluded from the forest notification, would confer any right or title on the petitioner over the property in question, that the G.O. and the consequential notification speak only about exclusion of the two villages from the notification issued under Section 4 (1) of the A.P. Forest Act and nothing has been stated therein about the right or title of the petitioner over the land in question. Learned Special Government Pleader would submit that, except placing reliance on G.O.Ms.No.439 dated 13.03.1957 and the consequential notification under the Forest Act, no material is placed by the

petitioner before this Court to establish her title over the property, that even assuming that these lands were situated outside the Sanad or the Estate, the petitioner had to make a claim before the Settlement Officer or she had to approach the appropriate Civil Court to resolve her dispute as directed by this Court in W.P.320 of 1957. Learned Special Government Pleader would submit that the said lands, from the date of its survey, are shown as assessed waste (dry) in the village accounts and vest in the Government and as such the claim of the petitioner, at this juncture and after a lapse of more than four decades, is unsustainable and, having lost her claims through Sri A. Raja Reddy and 13 others, she had invented a new procedure with the intention to partake with government property. Learned Special Government Pleader would rely on **Balu Laxman Khatik v. Biru Ramachandra Kotmire**[13], **Raghunathe Jew v. State of Orissa**[14], **Vatticherukuru Village Panchayat v. Nori Venkatarama Deekshithulu**[15], **D.L.F. Housing Construction (P) Ltd. v. Delhi Municipal Corporation**[16], **State of M.P. v. M.V. Vyavsaya & Co.**[17], and **T.N. Godavarman Thirumulkpad**[1].

30. The relevant statutory and other provisions applicable to the case on hand are required to be taken note of.

A.P.(ANDHRA AREA) ESTATES LAND ACT

Section 3(2) of the A.P. (Andhra Area) Estates Land Act, 1908 defines “Estate” to mean:-

(a) Any permanently-settled estate or temporarily settled zamindari:

(b) Any portion of such permanently-settled estate or temporarily settled zamindari which is separately registered in the office of the Collector:

(c) Any unsettled palaiyam or jagir;

(d) (i) any inam village, or

(ii) any hamlet or khandriga in an inam village, of which the grant as

an inam has been made, confirmed or recognized by the Government, notwithstanding that subsequent to the grant, such village, hamlet or khandriga has been partitioned among the grantees, or the successors-in-title of the grantee or grantees;

Explanation:- (1) Where a grant as an inam is expressed to be of a named village, hamlet or khandriga in an inam village the area which forms the subject-matter of the grant shall be deemed to be an estate notwithstanding that it did not include certain lands in the village hamlet or khandriga of that name which have already been granted on service or other tenure or been reserved for communal purposes.

Explanation (1-A):- An inam village, hamlet or khndriga in an inam village granted in inam, shall be deemed to be an estate, even though it was confirmed or recognized on different dates, or by different title deeds or in favour of different persons.

Explanation (I-B) :- If any hamlet or khandriga granted as inam was at any time designated as an inam village or as a part thereof in the Revenue accounts, it shall for purposes of item (ii) of sub-clause(d) be treated as being a hamlet or khandriga of an inam village, notwithstanding that subsequently it has come to be designated in the Revenue accounts as a ryotwari or zamindari village or part thereof.

Explanation (2): Where an inam village is resumed by the Government, it shall cease to be an estate; but, if any village so resumed is subsequently regranted by the government as an inam, it shall form the date of such regrant, be regarded as an estate.

Explanation (3): Where a portion of an inam village is resumed by the Government, such portion shall cease to be part of the estate, but the rest of the village shall be deemed to be an inam village for the purposes of this sub-clause. If the portion so resumed or any part thereof is subsequently regranted by Government as an inam, such portion or part shall from the date of such regrant, be regarded as forming part of the inam village for the purpose of this sub-clause;

(e) any portion consisting of one or more villages of any of the estates specified above in clauses (a), (b) and (c) which is held on a permanent under-tenure”

Section 3(5) defines “Landholder” to mean

“person owning an estate or part thereof and includes every person entitled to collect the rents of the whole or any portion of the estate by virtue of any transfer from the owner or his predecessor-in-title or of any order of a competent court or of any provisions of law.”

Where there is a dispute between two or more persons as to which of them is the landholder for all or any of the purposes of this Act or between two or more joint landholders as to which of them is entitled to proceed and be dealt with as such landholder, the person who shall be deemed to be the landholder for such purposes shall be the person whom the Collector subject to any decree or order of a competent civil court may recognize or nominate as such landholder in accordance with rules to be framed by the State

Government in this behalf.

Section 3(10) defines “private land” to mean:

“(a) in the case of an estate within the meaning of sub-clauses (a),(b),(c), or (e) of Clause (2) means the domain or home-farm land of the landholder by whatever designation known such as, kambattam, khas, sir, or pannai, and includes all land which is proved to have been cultivated as private land by the landholder himself, by his own servants or by hired labour, with his own or hired stock, for a continuous period of twelve years immediately before the commencement of this Act, and

(b) in the case of an estate within the meaning of sub-clause (d) of Clause (2) means-
(i) the domain or home-farm landholder, by whatever designation known, such as kambattam, khas, sir or pannai; or
(ii) land which is proved to have been cultivated as private land by the landholder himself, by his own servants or by hired labour, with his own or hired stock, for a continuous period of twelve years immediately before the first day of July, 1908, provided that the landholder has retained the Kudivaram ever since and had not converted the land into ryoti land; or
(iii) land which is provided to have been cultivated by the landholder himself, by his own servants or by hired labour, with his own or hired stock, for a continuous period of twelve years immediately before the first day of November, 1933, provided that the landholder has retained the kudivaram ever since and has not converted the land into ryoti land; or
(iv) land the entire kudivaram in which was acquired by the landholder before the first day of November, 1933 for valuable consideration from a person owning the kudivaram but not the melvaram, provide that the landholder has retaind the kudivaram ever since and has not converted the land into ryoti land, and provided further that, where the kudivaram was acquired at a sale for arrears of rent, the land shall not be deemed to be private and unless it is proved to have been cultivated by the landholder himself, by his own servants or by hired labour, with his own or hired stock, for a continuous period of twelve years since the acquisition of the land and before the commencement of the Ahdra Pradesh (Andhra Area) Estates Land (Third Amendment) Act, 1936.

Section 3(15) defines ‘Ryot” to mean

“a person who hold for the purpose of agriculture ryoti land in an estate on condition of paying to the landholder the rent which is legally due upon it.
Explanation:- A person who has occupied ryoti land for a continuous period of twelve years shall be deemed to be a ryoti for all the purposes of this Act.”

Section 3(16) defines “Ryoti Land” to mean

“cultivable land in an estate other than private land but does not include-

(a) beds and bunds of tanks and of supply, drainage surplus or irrigation

channels;

(b) threshing floor, cattle-stands, village-sites, and other lands situated in any estate which are set apart for the common use of the villagers;

land granted on service tenure either free of rent or on favourable rates of rent if granted before the passing of this Act or free of rent if granted after that date, so long as the service tenure subsists"

A.P.(A.A) ESTATES (ABOLITION AND CONVERSION INTO RYOTWARI) ACT:

31. The A.P. (A.A) Estates (Abolition and Conversion into Ryotwari) Act, 1948 (Act 26 of 1948) provided for the repeal of the permanent settlements, acquisition of the landholders rights in permanent estates and in certain other estates in the State of Andhra Pradesh and the introduction of the ryotwari settlements in such estates. It applied to all estates as defined in clause (2) of Section 3 of the Estates Land Act.

32. The statement of objects and reasons of the Estates Abolition Act, speaks of the acute discontent among estate ryots and agitation under the zamindari administration which was considered to have outlived its usefulness and needed abolition. It also refers to the election manifesto, issued by the Working Committee of the Congress Party in December 1945, urging reform of the land system and that such reforms involved removal of all intermediaries between the peasant and the State and that the rights of such intermediaries should be abolished on payment of equitable compensation. In February 1947 the Madras Legislative Council passed a resolution accepting the general principle of the abolition of the zamindari system and recommended to the government that legislation for the purpose be undertaken and brought forward at an early date. The Government accordingly proposed to abolish the zamindari

system by acquiring all estates governed by the Estates Land Act, converting them into ryotwari paying equitable compensation to several persons having interest in the estates.

33. Under Section 2(3) of the Estates Abolition Act, "Estates" are defined to mean a zamindari or an under tenure or an inam estate. Clause (7) of Section 2 defines "inam estate" to mean an estate within the meaning of Section 3 clause (2)(d) of the Estates Land Act. Clause (16) of Section 2 defines "zamindari estate" to mean an estate within the meaning of Section 3(2) of the Estates Land Act. Section 3 of the Estates Abolition Act relates to the consequences of notification of the estate and reads as under:

Consequences of notification of estate.

With effect on and from the notified date and save as otherwise expressly provided in this Act-

a) the Madras Permanent Settlement Regulation, 1802, the Estates Land Act, and all other enactments applicable to the estate as such except the Madras Estates Land (Reduction of Rent) Act, 1947, shall be deemed to have been repealed in their application to the estate;

b) the entire estate (including all communal lands and porambokes; other non-ryoti lands; waste lands; pasture lands; lanka lands; forests; mines and minerals; quarries; rivers and streams; tanks and irrigation works; fisheries; and ferries), shall stand transferred to the Government and vest in them, free of all encumbrances; and the Madras Revenue Recovery Act, 1864, the Madras Irrigation Cess Act, 1865 and all other enactments applicable to ryotwari areas shall apply to the estate;

c) all rights and interest created in or over the estate before the notified date by the principal or any other land-holder, shall as against the Government cease and determine;

d) the Government may, after removing any obstruction that may be offered, forthwith take possession of the estate, and all accounts, registers, pattas, munchilikas, maps, plans and other documents relating to the estate which the Government may require for the administration thereof:

Provided that the Government shall not dispossess any person of any land in the estate in respect of which they consider that he is *Prima facie* entitled to a ryotwari patta-

(i) if such person is a ryot, pending the decision of the Settlement Officer as to whether he is actually entitled to such patta;

(ii) if such person is a landholder, pending the decision, of the Settlement Officer and the Tribunal on appeal, if any, to it, as to whether he is actually entitled to such patta;

e) the principal or any other landholder and any other person whose rights stand transferred under clause (b) or cease and determine under clause (c), shall be entitled only to compensation from the Government as provided in this Act;

f) the relationship of landholder and ryot shall, as between them, be extinguished;

g) ryots in the estate and persons holding under them shall, as against the Government, be entitled only to such rights and privileges as are recognized or conferred on them by or under this Act, and any other rights and privileges which may have accrued to them in the estate before the notified date against the principal or any other landholder thereof shall cease and determine and shall not be enforceable against the Government or such landholder.

34. Section 5(1) requires the Government to appoint one or more Settlement Officers to carry out the functions and duties assigned to them under the Act. Under sub-section (2) thereof, every Settlement Officer shall be subordinate to the Director and shall be guided by such lawful instructions as he may issue from time to time and the Director shall also have the power to cancel or revise any of the orders, acts or proceedings of the Settlement Officer other than those in respect of which an appeal lies to the Tribunal.

35. Section 7 relates to the powers of the Board of Revenue and reads as under:

7. The Board of Revenue shall have power-

a) to give effect to the provisions of this Act and in particular to superintend the taking over of estates and to make due arrangements for the interim administration thereof;

b) to issue instructions for the guidance of the Director, District Collectors, Settlement Officers and managers of estates;

c) to cancel or revise any of the orders, acts or proceedings of any Settlement Officer other than those in respects of which an appeal lies to the Tribunal or of any manager; and

d) to cancel or revise any of the orders, acts or proceedings of the Director or of any District Collector, including those passed, done or taken in the exercise of revisional powers.

36. Section 9 relates to determination of inam estates and Section 10 to the date of creation of an under-tenure estate.

Section 11 relates to grant of ryotwari patta and reads as under:

Grant of ryotwari pattas.

Every ryot in an estate shall, with effect on and from the notified date, be entitled to a ryotwari patta in respect of –

a) all ryoti lands which, immediately before the notified date, were properly included or ought to have been properly included in his holding and which are not either lanka lands or lands in respect to which a landholder or some other person is entitled to a ryotwari patta under any other provision of this Act; and

b) all lanks lands in his occupation immediately before the notified date, such lands having been in his occupation or in that of his predecessors-in-title continuously from the 1st day of July, 1939 :

Provided that no person who has been admitted into possession of any land by a landholder on or after the 1st day of July, 1945 shall, except where the Government, after an examination of all the circumstances otherwise direct, be entitled to a ryotwari patta in respect of such land.

Explanation:- No lessee of any lanka land and no person to whom a right to collect the rent of any land has been leased before the notified date, including an ijaradar or a farmer of rent, shall be entitled to ryotwari patta in respect of such land under this section.

37. Section 12 relates to the lands of a zamindari estate in which the landholder is entitled to ryotwari patta and reads as under:

12. In the case of a Zamindari estate, the landholder shall, with effect on and from the notified date, be entitled to a ryotwari patta in respect of –

a) all lands (including lanka lands) which, immediately before the notified date, (i) belonged to him as private land within the meaning of section 3, clause (10) (a), of the Estates Land Act, or (ii) stood recorded as his private land in a record prepared under the provisions of Chapter XI or Chapter XII of the said Act, not having been subsequently converted into ryoti land;

b) (i) all lands which were properly included, or which ought to have been properly included, in the holding of a ryot and which have been acquired by the landholder, by inheritance or succession under a will, provided that the landholder has cultivated such lands himself, by his own servants or by hired labour, with his own or hired stock, in the ordinary course of husbandry from the date of such acquisition or the 1st day of July 1939, whichever is later and has been in direct and continuous possession of such lands from such later date;

ii) all lands which were properly included, or which ought to have been properly included, in the holding of a ryot and which have been acquired by the landholder by purchase, exchange or gift, but not including purchase at a sale for arrears of rent, provided that the landholder has cultivated such lands himself, by his own servants or

by hired labour, with his own or hired stock, in the ordinary course of husbandry from the 1st day of July 1945 and has been in direct and continuous possession of such lands from that date;

iii) all lands [not being (i) lanka lands, (ii) lands of the description specified in section 3, clause (16), sub-clauses (a),(b) and (c), of the Estates Land Act, or (iii) forest lands] which have been abandoned or relinquished by a ryot, or which have never been in the occunpation of a ryot, provided that the landholder has cultivated such lands himself, by his own servants or by hired labour, with his own or hired stock in the ordinary course of husbandry from the 1st day of July 1939, and has been in direct and continuous possession of such lands from that date.

Explanation:- 'cultivate' in this clause includes the planting and rearing of topes, gardens and orchards, but does not include the rearing of topes of spontaneous growth.

38. Section 13 relates to lands in an inam estate in which the landholder is entitled to a ryotwari patta. Section 14 relates to the land in an under-tenure estate in which the land-holder is entitled to ryotwari patta and Section 15 relates to determination of lands in which the landholder is entitled to a ryotwari patta. Section 15 reads as under:

15. (1) The Settlement Officer shall examine the nature and history of all lands in respect of which the landholder claims a ryotwari patta under section 12, 13 or 14, as the case may be, and decide in respect of which lands the claim should be allowed.

(2) Any person deeming himself aggrieved by a decision of the Settlement Officer under Sub-Section (1) may within two months from the date of the decision, or such further time as the Tribunal may in its discretion allow, appeal to the Tribunal; and its decision shall be final and not be liable to be questioned in any Court of Law:

39. Section 20 relates to savings of rights of certain lessees and others and reads as under:

(1) In cases not governed by Sections 18 and 19, where before the notified date, a landholder has created any right in any land (whether by way of lease or otherwise) including rights in any forest, mines or minerals, quarries, fisheries or ferries, the transaction shall be deemed to be valid; and all rights and obligations arising thereunder, on or after the notified date, shall be enforceable by or against the Government:

Provided that the transaction was not void or illegal under any law in

force at the time;

Provided further that any such right created on or after the 1st day of July 1945 shall not be enforceable against the government, unless it was created for a period not exceeding once year:

Provided also that where such right was created for a period exceeding one year, unless it relates to the private land of the landholder within the meaning of Section 3, clause (10), of the Estates Land Act, the Government may, if, in their opinion, it is in the public interest to do so, by notice given to the person concerned, terminate the right with effect from such date as may be specified in the notice, not being earlier than three months from the date thereof.

(2) The person whose right has been terminated by the government under the foregoing provision, shall 5be entitled to compensation from the government which shall be determined by the Board of Revenue in such manner as may be prescribed, having regard to the value of the right and the unexpired portion of the period for which the right was created. The decision of the Board of Revenue shall be final and not be liable to be questioned in any Court of law.

40. Section 22 provides for the manner of effecting ryotwari settlements of estates. Section 24 provides that the compensation payable in respect of an estate shall be determined in accordance with the provisions thereafter. Section 25 provides that the compensation shall be determined for the estate as a whole and not separately for each of the interests therein. Under Section 26 a sum, called the basic annual sum, shall first be determined in respect of the estate. Section 27 relates to the component parts of the basic annual sum in a zamindari estate.

41. Section 56 relates to decision of certain disputes arising after an estate is notified and reads as under:

Section 56: Decision of certain disputes arising after an estate is notified:

(1) Where after an estate is notified, a dispute arises as to (a) whether any rent due from a ryot for any fasli year is an arrear or (b) what amount of rent is in arrear or (c) who the lawful ryot in respect of any holding is, the dispute shall be decided by the Settlement Officer.

(2) Any person deeming himself aggrieved by any decision of the Settlement Officer under sub-section (1) may, within two months, from the date of the decision or such further time as the Tribunal may in its discretion allow, appeal to the Tribunal; and its decision shall be final and not be liable to be questioned in any Court of Law.

42. Section 63 relates to decision of questions regarding forests and reads thus:

Section 63: Decision of questions regarding forests:- If any question arises whether any land in an estate is a forest or is situated in a forest, or as to the limits of a forest, it shall be determined by the Settlement Officer, subject to an appeal to the Director within such time as may be prescribed and also to revision by the Board of Revenue.

43. Section 68 relates to the power to remove difficulties and reads thus:-

68. Power to remove difficulties:- If any difficulty arises in giving effect to the provisions of this Act, the Government may, as occasion may require, do anything which appears to them necessary for the purpose of removing the difficulty.

A.P. RECORD OF RIGHTS IN LAND AND PATTADAR PASS BOOK ACT:

44. Though the A.P. (Telangana Area) Record of Rights in Land Regulations provided for the preparation and maintenance of record of rights in the Telangana Area of the State as there was no corresponding enactment providing for such statutory record of rights applicable to the Andhra area of the State, the government decided that a scheme for preparation and maintenance of record of rights should be implemented in the Andhra area of the State also and decided that a fresh legislation be enacted making it applicable throughout the State for the preparation and maintenance of the record of rights, repealing the said Regulations.

45. The Andhra Pradesh Record of Rights in Land and Pattadar Pass Books Act, 1971, (Act 26 of 1971), was made wherein provision was made to deal with record of rights duly prepared and

maintained for the villages under the said Regulation as the record of rights for that village and giving the affected person an opportunity to apply to the authorized officer for rectification of any entry in such record.

46. Section 2(4) defines land to mean land which is used or is capable of being used for purposes of agriculture, including horticulture but does not include land used exclusively for non-agricultural purposes.

47. Section 3 relates to preparation and updating of record of rights in all lands and sub-section (1) thereof reads as under:

"**3. Preparation and updating of record of rights in all lands**:-

(1) As soon as may be after the commencement of this Act any area, there shall be prepared and brought up to date from time to time, by the recording authority in such manner, and thereafter maintained in such form as may be prescribed, a record of rights in all lands in every village in that area and such record of rights shall contain the following particulars, namely-

(a) the names of all persons who are owners, pattadars, mortgages occupants or tenants of lands;

(b) the nature and extent of the respective rights or interest of such persons and the conditions or liabilities if any, attaching thereto;

(c) the rent, revenue or other amount, if any, payable by, or to any of such persons"

48. Section 4, which requires acquisition of rights to be intimated, reads thus:

4. Requisition of rights to be intimated:-

1. Any person acquiring by succession survivorship, inheritance, the partition, Government patta, decree of a Court or otherwise any right as owner, pattadar, margazee, occupant or tenant of a land and any person acquiring any right as occupant of a land by any other method shall intimate in writing his acquisition of such right to the Mandal Revenue Officer within 90 days from the date of such acquisition, and the said Mandal Revenue Officer shall give or send a written acknowledgment of the receipt of such intimation to the person making it:

Provided that where the person acquiring the 4ight is a minor or

otherwise disqualified, his guardian or other persons having charge of his property shall intimate the fact of such acquisition to the Mandal Revenue Officer.

2. Notwithstanding anything contained in the Registration Act 1908, every registering officer appointed under the Act and registering a document relating to a transaction in land, such as sale mortgage, gift, lease or otherwise shall intimate the Mandal Revenue Officer of the Mandal in which the property is situate of such transaction.

Explanation I:- The right mentioned above shall include a mortgage without possession and a right determined by civil court.

Explanation II:- A person in whose favour a mortgage is discharged or a lease is determined, acquires a right within the meaning of this section.

49. Section 5 relates to amendment and updating of Record of Rights and reads thus:-

(1) On receipt of intimation of the fact of acquisition of any right referred to in Section 4, the Mandal Revenue Officer shall determine as to whether, and if so in what manner, the record of rights may be amended in consequence therefore and shall carry out the amendment in the record of rights in accordance with such determination:

Provided that no order refusing to make an amendment in accordance with the intimation shall be passed unless the person making such intimation has been given an opportunity of making his representation in that behalf.

(2) Where the Mandal Revenue Officer has reason to believe that an acquisition of any right of a description to which Section 4 applies has taken place and of which an intimation has not been made to him under that Section and where he considers that an amendment has to be effected in the record of rights, the recording authority shall carry out the said amendment in the rerecord of rights.

(3) The Mandla Revenue Officer shall, before carrying out any amendment in the record of rights under sub-section (1) or sub-section (2) issue a notice in writing to all persons whose names are entered in the record of rights and who are interested in or affected by the amendment and to any other persons whom he has reason to believe to be interested therein or affected thereby to show cause within the period specified therein as to why the amendment should not be carried out. A copy of the amendment and the notice aforesaid shall also be published in such manner as may be prescribed. The recording authority shall consider every object made in that behalf and after making such enquiry as may be prescribed pass such order in relation thereto as he deems fit.

(4) Every order passed under this section shall be communicated to the person concerned.

(5) Against every order of the Mandal Revenue Officer either making an amendment in the record of rights or refusing to make such an amendment, an appeal shall lie to the Revenue Divisional Officer or such authority as may be prescribed, within a period of sixty days from the date of communication of the said order and the decision of the appellate authority thereon shall

subject to the provisions of Section 9, be final. (6). The Mandal Revenue Officer shall have the power to correct clerical errors, if any, the Pass Books.

50. Section 6 relates to presumption of correctness of entries in the record of rights and thereunder every entry in the record of rights shall be presumed to be true until the contrary is proved or until it is otherwise amended in accordance with the provisions of the Act.

51. Section 8 relates to Bar of suits and reads as under:

"**8. Bar of Suits:-**

(1) No suit shall lie against the Government or any officer of Government in respect of a claim to have an entry made or in relation to an entry made in any record of rights or to have any such entry omitted or amended.

(2) If any person is aggrieved as to any rights of which he is in possession by an entry made in any record of rights he may institute a suit against any person denying or interested to deny his title to such right for declaration of his right under Chapter VI of the Specific Relief Act, 1963 (Central Act 47 of 1963) and the entry in the record of rights shall be amended in accordance with any such declaration.

BOARD STANDING ORDERS

52. Land is classified into different categories under the Board Standing Orders. Board Standing Order 15(2) reads thus:

"2.Categories of land:-(1) For the purpose of this Standing Order land may be classified thus:

(i) Land prima facie available for assignment

(a) Assessed land which is not reserved

(b) Un-assessed land which is not reserved

(ii) Land prima facie not available for assignment

(a) Poramboke

(b) Reserved land ("assessed" and "unassessed"). "Unassessed" land is land to which no classification and assessment have been assigned.

(2) Reserved Land:-Land is said to be "reserved" when it is earmarked as being required or likely to be required for special purposes, and entry being made in the settlement register and village adangal, and also in the prohibitive order book-See Standing Order No. "165". Land reserved for depressed classes need not however be entered in the prohibitive order book, but the necessary entries should be made in the settlement register

and the village adangal. Before any land which is not assessed can be assigned, it must be transferred to "assessed". After transfer, the ordinary rules under Section II apply. The Divisional Officer may order such transfers, subject to the provisions of paragraphs 33
and 35 below. The tahsildar may order transfer of "assessed" and "unassessed" land to "poramboke" and their entry as "reserved".

53. It is thus clear that only where the land is reserved and when it is earmarked as being required or likely to be required for certain purposes, is an entry made in the prohibitory order book.

54. Before examining the contentions urged on behalf of the petitioner, by Sri Challa Sitaramaiah, learned Senior Counsel, it is necessary to first consider some of the objections raised on behalf of the respondents. Learned Special Government Pleader would submit that, irrespective of the nature of the land, the landholder, under Sections 12, 13 and 14 of the Estates Abolition Act, (depending on the nature of the estate), has to obtain a ryotwari patta for determination of his entitlement to the land in accordance with Section 11 of the Act. According to the Learned Special Government Pleader, even for her personal properties, which fall outside the "Estate", a ryotwari patta should have been obtained by the petitioner.

55. As noted above, Section 2(16) of the Estates Abolition Act defines "zamindari estate" to mean an estate under Section 3(2) (a),(b) or (c) of the Estates Land Act. Section 3(2) of the A.P. (Andhra Area) Estates Land Act defines "Estate" to mean (a) a permanent pre-settled estate or permanent pre-settled zamandari (b) any portion of such permanently settled or temporarily settled zamindari which is registered in the office of the Collector and (c) any unsettled palaiyam or jagir. Thus, under Section 12 of the

Estates Abolition Act, the land holder is entitled for a ryotwari patta only in respect of lands which fall within the “Estate” as defined under Section 3(2) of the Estates Land Act. Lands within the Estate are again classified as private and ryoti lands. Private lands are those which the landholder himself, or through persons engaged by him, cultivates and ryoti lands are agricultural lands cultivated by a ryot on payment of rent to the landholder.

56. Since the notification, issued under Section 3 of the Estates Abolition Act, results in the entire “Estate” being transferred to and to vest in the government free from all encumbrances, it is only for private lands and ryoti lands within an “Estate” that a patta can be sought either by the landholder or by the ryot concerned. A zamindar, who holds lands which are not included in the assets of the zamindari estate at the permanent settlement of the estate, does not have to obtain a ryotwari patta for such lands, for these personal properties of the zamindar fall outside the “Estate” and neither stand transferred to nor do they vest in the Government under Section 3 of the Estates Abolition Act. If the petitioner’s contention, that the lands in Yerranagavaripalle village, and lands in paimash Nos.120 to 139 of Penubalakala hamlet, are her personal property and do not form part of the Estate were to merit acceptance, it cannot be said that even for these lands, an application for grant of ryotwari patta should be made and ryotwari pattas obtained. The contention of the learned Special Government Pleader that, even for her personal properties which fall outside the “Estate”, and which are not covered by or fall within the notification issued under Section 3 of the Estates Abolition Act, a ryotwari patta should have been obtained must therefore be rejected.

57. The fact that G.O.Ms.No.439 dated 13.03.1957, issued by the government continues to remain in force, till date, is not in dispute. In the absence of any proceedings being instituted by the government to revoke its orders, the contention of the learned Special Government Pleader that since the procedure contemplated under the Estates Abolition Act was not followed while issuing the said G.O, and the very issuance of G.O.Ms.No.439 dated 13.03.1957 is contrary to the provisions of the Estates Abolition Act, it must be ignored, must be rejected. Having issued the order in G.O.Ms.No.439 dated 13.03.1957, not having taken any action to rescind it and since the said G.O. continues to remain in force as on date, the government cannot be heard to say that the very order, which it had issued, is illegal, contrary to the provisions of the Act and must be ignored, more so, in the absence of any challenge in these writ proceedings to the validity of G.O.Ms.No.439 dated 13.03.1957. G.O.Ms.No.439 dated 13.03.1957 must therefore be held to continue to remain in force.

58. Sri Challa Sitaramaiah, learned Senior Counsel, would submit that the petitioner is merely seeking release of these lands from the prohibitory order book and for the petitioner's name to be included in the revenue records as the owner of these lands. Learned Senior Counsel would submit that, even if the petitioner is shown as the owner of these forest lands, she would still be required to comply with the provisions of the Forest Conservation Act and the law laid down by the Apex Court in **T.N. Godavarman Thirumulkpad**[1]. Learned Senior Counsel would submit that no direction is sought for by the petitioner, in this writ petition,

contrary to the provisions of the Forest Conservation Act or the law laid down by the Supreme Court in **T.N. Godavarman Thirumulkpad**[1] and as such reliance placed, by the respondents, on **T.N. Godavarman Thirumulkpad**[1], is misplaced.

59. Section 2 of the Forest (Conservation) Act 1980 relates to restriction on the de-reservation of forests or use of forest land for non-forest purposes and reads as under:

"2 Restriction on the dereservation of forests or use of forest land for non forest purpose:-

Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing,-

(i) that any reserved forest (within the meaning of the expression "reserved forest" iii any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

(ii) that any forest land or any portion thereof may be used for any non-forest purpose.

aa. Inserted by the Forest (Conservation) Amendment Act (69 of 1988) S. 2 (15-3-1989). (iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government;

(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.

bb. Substituted, Inserted by the Forest (Conservation) Amendment Act (69 of 1988) S. 2 (15-3-1989).

Explanation.- For the purposes of this section "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for-

(a) the cultivation of tea, coffee, spices, rubber, palms, oil bearing plants, horticulture drops or medicinal plants;

(b) any purpose other than reafforestation, but does not include any work relating or ancillary to conservation, development and management of forests and wild-life, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes.

60. De-reservation of forests or use of forest land for non-forest purpose is not in issue in this writ petition. Even if the relief sought for in the writ petition were to be granted the forest lands, for which the petitioner claims title and for mutation in the revenue records as its owner, would fall under the category of private forests and would be subject to the restrictions imposed under the Forest (Conservation) Act 1980, the A.P. Forest Act, 1967 and the judgment of the Supreme Court in **T.N. Godavarman Thirumulkpad**[1].

61. The notification, in G.O.Ms.No.1427 dated 29.03.1972, was issued in exercise of the powers conferred under Section 4 of the A.P. Forest Act, 1967, which reads thus:

"**4.Notification by Government**: (1) Whenever it is proposed to constitute any land as a reserved forest, the Government shall publish a notification in the Andhra Pradesh Gazette and in the District Gazette concerned in any;

(a) specifying, as nearly as possible, the situation and limits of such land;

(b) declaring that it is proposed to constitute such land as reserved forest;

(c) appointing a Forest Settlement Officer to consider the objections, if any, against the declaration under Clause (b) and to enquire into and determine the existence, nature and extent of any rights claimed by, or alleged to exist in favour of, any person in or over any land comprised within such limits, or to any forest produce of such land, and to deal with the same as provided in this Chapter.

Explanation: (1) For the purpose of Clause (a), it shall be sufficient to describe the limits of the land by any well-known or readily intelligible boundaries, such as roads, rivers, bridges and the like.

(2) A person appointed to be a Forest Settlement Officer under Clause (c) of sub-section (1) shall be an officer of the Revenue Department not below the rank of a Revenue Divisional Officer.

(3) Any forest officer may represent the Forest Department at the inquiry conduced under this Chapter."

62. This notification is a proposal to constitute the area, mentioned therein, as a reserve forest. Under Section 15 of the A.P. Forest Act, the government is empowered to publish a

notification specifying the limits of the reserve forest and to declare the same to be reserved from the date fixed therein. From the said date, such forest shall be deemed to be a reserve forest. Under Section 17, no right of any description shall be acquired by any person in, or over, a reserve forest, except by succession or under a grant or contract in writing made or entered into by or on behalf of the government or any person in whom such right was vested before the publication of the notification under Section 15. Under Section 18(1) no right under Section 11 shall be alienated by way of grant, sale, exchange, lease or otherwise, without sanction of the government.

63. Thus lands, which fall within the reserve forest, are subject to the restrictions specified under the A.P. Forest Act. As is clear from the Section 4 notification, issued in G.O.Ms.No.1427 dated 29.03.1972, the boundary line of the land specified in the notification excludes Sy.No.211 of Penubalakala village from station 17 to 159 on the basis of survey and demarcation done by the survey party, North West range, Chittoor as per G.O.Ms.No.439 dated 13.03.1957. As such the lands in Yerranagavaripalli and Paimash Nos. 120 to 139 of Penubalakala hamlet, as per G.O.Ms.No.439 dated 13.03.1957, was excluded from the boundaries of the reserve forest under the Section 4 notification issued in G.O.Ms.No.1427 dated 29.03.1972. The Chief Conservator of Forests, in his proceedings dated 3.11.1982, reiterated this fact and informed the petitioner that the area of Yerranagavaripalle was not covered by the reserve forest. Under B.S.O.15(2), an entry is made in the Prohibitory Order book only in cases where the land is reserved and is earmarked as being

required or likely to be required for certain purposes. Respondents would contend that these lands were entered in the prohibitory order book to prohibit assignment of lands and since these lands belong to the government, they were not obligated to inform the petitioner with regards such entry, before hand. The Supreme Court, in **T.N. Godavarman Thirumulkpad**[1], held that prior approval of the Central Government is required for any non-forest activity within the area of any "forest" and all ongoing activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith. The Supreme Court held that the word "forest" must be understood to cover all statutorily recognized forests, whether designated as reserved, protected or otherwise, that the term "forest land" would not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the government records irrespective of ownership. The Supreme Court held that, for the conservation of forests and matters connected therewith, the provisions of the Forest Conservation Act, 1980, would apply to all forests so understood irrespective of ownership or classification thereof. Even though the forest areas of Yerranagavaripalli, and Paimash No.120 to 139 of Penubalakala, were excluded from the boundaries of the notified reserve forest, notified in G.O.Ms.No.1472 dated 29.03.1972, they nonetheless fall under the category of "forests". Since all non-forest activity, within the areas of even "private forests", have been directed to be stopped by the Apex Court, entry of these lands in the prohibitory order book to comply with the directions of the Supreme Court, and to safeguard these lands, cannot be faulted. Compliance with the law laid by the Supreme Court cannot be set at naught on the ground

of violation of principles of natural justice.

64. As rightly contended by Sri Challa Sitaramaiah, Learned Senior Counsel, rights, if any, which the petitioner had over these lands prior to abolition of the Estates have not been extinguished by G.O.Ms.No.439 dated 13.03.1957. While G.O.Ms.No. 439 dated 13.03.1957 cannot be said to have extinguished title, it cannot also be said to have conferred title, over the lands in Yerranagavaripali and paimash Nos. 120 to 139 of Penubakala, either on the petitioner or the erstwhile zamindar. The petitioner has to establish her title over these lands independent of G.O.Ms.No.439 dated 13.03.1957. It is only on her establishing her title over these lands, and on her being declared as the owner thereof, can the petitioner be said to be aggrieved by the inclusion of these lands in the prohibitory order book and be heard to contend that such inclusion, without putting her on notice, is in violation of principles of natural justice.

65. Learned Special Government Pleader would contend that since the Settlement Officer had directed that these lands be classified as “assessed waste” according to the existing classification in the village accounts and since this order of the Settlement Officer has been confirmed in revision, the order of the Settlement Officer has attained finality. Learned Special Government Pleader would submit that the Settlement Officer had merely taken note of the existing classification in the village accounts and had not passed any order contrary thereto, and in as much as the petitioner had acquiesced to this conclusion of the Settlement Officer, it was not open for her to turn around and contend that these lands are not waste lands, but lands which are the personal property of the erstwhile zamandir and that she is the

owner of the said lands. Sri Challa Sitaramaiah, Learned Senior Counsel, on the other hand, would submit that the jurisdiction of the Settlement Officer is only to act in accordance with the provisions of the Estates Abolition Act and to decide claims of parties with regards lands situated within an “Estate”. Learned Senior Counsel would submit that for lands which do not form part of the “Estate”, which on a notification issued under Section 3 of the Estates Abolition Act stand transferred and vested in the government, the Settlement Officer has no jurisdiction to adjudicate claims of parties thereto.

66. Under Section 5(1), of the Estates Abolition Act, the government is empowered to appoint the Settlement Officer to carry out the functions and duties assigned under the Estates Abolition Act. Under Section 9(1), the Settlement Officer is empowered to inquire and determine whether any inam in his jurisdiction is an inam estate or not. Under Section 10, the Settlement Officer is empowered to determine the date on which the under-tenure estate is created. Under Section 22(1), the Settlement Officer is empowered to effect a ryotwari settlement of the estate or part thereof in accordance with the settlement notification prepared and published by the government for the purpose and under Section 56, on an estate being notified, if a dispute arises as to (a) whether rent due from a ryot is in arrears or (b)what amount is in arrear or (c) who is the lawful ryot in respect of any holding which is in dispute, it shall be decided by the Settlement Officer. It is clear, from the aforesaid provisions, that the jurisdiction of the Settlement Officer to adjudicate claims and counter claims is only for lands within an ‘Estate’ which, under

Section 3 of the Estates Abolition Act, stood transferred and vested in the government. The Settlement Officer has not been conferred jurisdiction, under the Estates Abolition Act, to adjudicate claims over lands which do not form part of the 'Estate'. While the submission of Sri Challa Sitaramaiah, learned Senior Counsel, that since the order of the Settlement Officer, is without jurisdiction, is a nullity and is required to be ignored, has substantial force, it cannot however be lost sight of that even orders without jurisdiction are required to be declared as such and it is only on such declaration that the order would become void and a nullity. It is however unnecessary to delve further on this aspect since the consequences of the order passed by the Settlement Officer, beyond his jurisdiction, even if held to be a nullity, would not entitle the petitioner to the relief sought for in this writ petition.

67. Sri Challa Sitaramaiah, learned Senior Counsel, would further contend that, since the Commissioner, in his order dated 22.6.1998, had held that the land claimed by Sri A. Raja Reddy and others was a big block of forest land, the order of the Settlement Officer holding that these lands are "waste lands" has been impliedly overruled by the Commissioner. Learned Senior Counsel would place reliance on **State of Gujarat v. Gujarat Revenue Tribunal**[4], wherein the Supreme Court held thus:

"Now, the expression "waste lands" has a well-defined legal connotation. It means lands which are desolate, abandoned, and not fit ordinarily for use for building purposes. In *Shorter Oxford English Dictionary*, 3rd Edn., Vol. 2, p. 2510, the meaning of the word "waste" is given as:

> "1. Waste or desert land, uninhabited or sparsely inhabited and uncultivated country; a wild and desolate region; 2. A piece of land not cultivated or used for any purpose, and producing little or no herbage or wood. In legal use, a piece of such land not in any man's occupation but lying common. 3. A devastated region."

In the sequence in which the expression "waste lands" appears in the two relevant sections, it cannot but have its ordinary etymological meaning

as given in the *Shorter Oxford Dictionary* i.e. land lying desolate or useless, without trees or grass or vegetation, not capable of any use. In *Rajanand Brahma Shah* v. *State of U.P.: (1967) 1 SCR 373* this Court, while discerning the meaning of "waste and arable land" in Section 17(4) of the Land Acquisition Act, 1894, observed that the expression "waste land" as contrasted to "arable land", would mean "land which is unfit for cultivation and habitation, desolate and barren land with little or no vegetation thereon". To the same effect is the decision in *Ishwarlal Girdharilal Joshi* v. *State of Gujarat: (1968) 2 SCR 267*.

It is clear that these grasslands on hilly tracts were not waste lands. They were productive lands in the sense that grass grew naturally and so they were not desolate, abandoned or barren waste lands with no vegetation. The expression "waste lands" in the context would be clearly, in the original sense of the term "waste" as meaning barren or desolate lands which are unfit for any use or which are worthless. That test is not clearly fulfilled."

68. Learned Senior Counsel would submit that waste lands are lands lying desolate or useless, without trees or grass or vegetation, not capable of any use and are distinct from forest lands and since the Commissioner had held that the lands are forest lands, the finding recorded by the Settlement Officer that they are "waste lands" must be deemed to have been set aside. Learned Special Government Pleader, on the other hand, would submit that the Settlement Officer has not given any independent finding on the nature of the land and that he has merely taken note of the existing classification in the village accounts wherein these lands were recorded as "waste lands".

69. The fact that these lands are "forest lands" is not in dispute and as such the findings of the Settlement Officer that they are "waste lands", more so, when these lands do not form part of the estate, is clearly erroneous and is without jurisdiction. The order, of the Settlement Officer notwithstanding, since the then existing classification in the village accounts showed these lands as "waste lands", such classification can be corrected only on necessary proceedings being instituted for its rectification.

70. The Estates Abolition Act is an self-contained code and deals with the assets of an 'Estate' taken over by the government pursuant to a notification and which has consequently vested in it. The authorities under the Act are all required to act in accordance with the provisions of the Act and not contrary thereto or in excess thereof. Under Section 4, the Government is empowered to appoint the Director of Settlements to carry out survey and settlement operations in estates and introduce ryotwari settlement therein. The jurisdiction of the Director of Settlements is to carry out survey and settlement operations and to introduce ryotwari settlement only in an 'Estate' and not in other lands which do not form part of the 'Estate'. Section 7 relates to the power and control of the Board of Revenue and, under Sub-section (a) thereof, the Board of Revenue has been empowered to give effect to the provisions of the Act and in particular the superintending, taking over of estates, to make arrangements in the interim administration thereof and under sub-section(c) cancel or revise any orders or proceedings of the Settlement Officer. The power of Board of Revenue is also confined to the four corners of the Estates Abolition Act and to give effect to such provisions. While the power of superintendence, conferred on the Board, relates to the taking over of the Estates, the Board of Revenue has not been conferred the power to adjudicate on claims of land/property situated beyond the "estate". Under Section 8, the Government is empowered to constitute Tribunals. Under sub-section (3) thereof, each Tribunal would have jurisdiction over such Estates or parts thereof as the government may, by notification from time to time, determine. The jurisdiction of the Tribunal under Section 8(3) is only over "Estates" or parts thereof and not over other lands which

do not form part of the Estate. As such neither the Board of Revenue nor the Government could have adjudicated on the title of the zamindar over the forest land claimed by him to be his personal property, and their jurisdiction is confined only to a determination as to whether the lands claimed by the zamindar, as forming part of his personal property, formed part of the "Estate" or not.

71. The Board of Revenue held that these lands did not form part of the Estate. The Government, accepting the recommendations of the Board of Revenue, issued G.O.Ms.No.439 dated 13.03.1957 holding that these lands did not form part of the Estate and did not therefore vest in the government. Neither does G.O.Ms.No.439 dated 13.03.1957 explicitly state that the forest lands of Yerranagavaripalle and lands situated in Paimash Nos.120 to 139 of Penubalakala hamlet are owned by the petitioner herein nor could it have implicitly conferred title on the zamindar over these lands, since it had no jurisdiction to do so. The jurisdiction of the Board of Revenue and that of the Government, under the Estates Abolition Act, is confined to an enquiry as to whether the lands in question form part of the estate or not. Determination of the claim of the petitioner, or the erstwhile zamindar, must necessarily be confined to the question as to whether or not the lands, claimed by them to be their personal property, formed part of the "Estate" and not whether the zamindar had title over lands which do not form part of the Estate.

72. The sole basis of the petitioner's claim in this writ petition, with regards title and ownership of the forest lands in Yerranagavaripalli and Paimash Nos.120 to 139 of Penubalakala hamlet, is G.O.Ms.No.439 dated 13.03.1957. As noted above,

G.O.Ms.No.439 dated 13.03.1957 was issued pursuant to a petition submitted by the erstwhile zamindar of Punganur on 20.08.1952 claiming ownership of various areas situated in 35 villages, mentioned in the schedule attached to his petition, on the ground that the villages were purchased by one of his predecessors in title about 80 years ago and that the forests belonging to these villages had ever since been under the enjoyment of his predecessors in title and himself. As the said G.O. would not, by itself, confer title, the question which falls for consideration is as to whether this Court, in proceedings under Article 226 of the Constitution of India, would exercise its discretion and entertain a writ petition wherein the relief sought is, in effect, for a direction that the petitioner be declared as owner of these lands, pursuant to which alone would she be entitled for the consequential relief of her name being entered as the owner of these forest lands in the revenue records.

MUTATION IN REVENUE RECORDS NEITHER CREATES NOR EXTINGUISHES TITLE:

73. It is well settled that mutation of entries in the revenue records would not confer title and revenue records are not documents of title. Mutation of property in the revenue records neither creates nor extinguishes title nor has it any presumptive value on title. It only enables the person, in whose favour mutation is ordered, to pay land revenue. Title questions have to be decided by competent civil courts. (**Corporation of City of Bangalore v. M. Papaiah**[18], **Wawarni v. Inder Kaur**[19], **State of H.P. v. Keshav Ram**[20], **Yeluri Vijayabharathi v. Yeluri**

Manikyamma[21], **Sajana Granites**, **Madras**[5], **B.G. Laxman**[6]. Should this Court, in proceedings under Article 226 of the Constitution of India, examine disputed questions of title?

ADJUDICATION OF DISPUTED QUESTIONS OF FACT – A MATTER OF DISCRETION AND NOT A BAR FOR EXERCISE OF JURISDICTION UNDER ARTICLE 226:

74. Sri Challa Sitaramaiah, Learned Senior Counsel, would submit that there are no disputed questions of fact which require adjudication by this Court, and this court could grant the relief sought for on the basis of the undisputed facts on record. Learned Senior Counsel would submit that, in any event, this court is not precluded from examining disputes questions of fact in proceedings under Article 226 of the Constitution of India.

75. In **Binapani Dei**[7], the Supreme Court held thus:

"……Under Article 226 of the Constitution the High Court is not precluded from entering upon a decision on questions of fact raised by the petition. Where an enquiry into complicated questions of fact arises in a petition under Article 226 of the Constitution before the right of an aggrieved party to obtain relief claimed may be determined, the High Court may in appropriate cases decline to enter upon that enquiry and may refer the party claiming relief to a suit. But the question is one of discretion and not of jurisdiction of the Court. ……"

76. In **Babubhai Muljibhai Patel v. Nandlal Khodidas Barot**[22], the Supreme Court held thus:

"…..A writ petition under Article 226, it needs to be emphasised, is essentially different from a suit and it would be incorrect to assimilate and incorporate the procedure of a suit into the proceedings of a petition under Article 226. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right of relief, questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is no doubt discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises complex questions of fact, which may for their determination require oral evidence to

be taken, and on that account the High Court is of the view that the dispute should not appropriately be tried in a writ petition, the High Court may decline to try a petition (see *Gunwant Kaur* v. *Bhatinda Municipality* - AIR 1970 SC 802). If, however, on consideration of the nature of the controversy, the High Court decides, as in the present case, that it should go into a disputed question of fact and the discretion exercised by the High Court appears to be sound and in conformity with judicial principles, this Court would not interfere in appeal with the order made by the High Court in this respect…."

77. In **Shakuntala**[9], the Supreme Court held thus:

"……The result therefore is that firstly, the respondent had not become the landlady of the suit land since the share given to her in the partition was prima facie illegal and contrary to the provisions of law. Secondly, assuming that the partition was valid, the respondent had no right to terminate the tenancy of the appellant on any ground whatsoever. The appellant was a tenant since prior to August 1, 1953 and had also continued to be such tenant till April 1, 1961. Hence he became a statutory owner under Section 46 on and from April 1, 1961. Any proceedings for evicting him on the ground that he was a tenant and, therefore, had fallen in arrears of rent could not have, therefore, been adopted in 1962. It is unfortunate that the High Court lost sight of the said patent legal position and brushed aside the contention in that behalf on the ground that the question involved was a question of law and fact. We are unable to see what questions of fact were necessary to investigate for the disposal of the said question. It was a pure question of law arising out of the admitted facts on record….."

78. In **Karam Singh**[10], the Supreme Court held thus:-

"….It was held that it was not open to the Court in its extraordinary jurisdiction under Article 226 of the Constitution to go into the disputed questions of fact and it was hence that the writ petition was dismissed. We find that in the judgment it is stated that the said Smt Jeevani had filed a suit for declaration regarding her ownership against the Gram Panchayat which is the contesting respondent herein and obtained a decree in her favour on October 20, 1965. The petitioner, has obtained a decree against Smt Jeevani in respect of the ownership of the said land. In these circumstances, without any further facts, we find it difficult to accept the view of the High Court that there were disputed questions of fact as to the ownership of the suit land which could not be decided in a writ petition. We, therefore, set aside the impugned judgment and order of the High Court and remand the writ petition to the High Court for disposal according to law…."

79. In **Merit Enterprises**[11], the Supreme Court held thus:-

"……Learned counsel for the appellant-State raises a fundamental issue contending that it was not the domain of the High Court to undertake such a

fact-finding enquiry in proceedings under Article 226 of the Constitution. It has further been contended that the land in dispute was shown in the revenue records as belonging to the Government and thus should have predominantly been viewed over other government documents so as to establish the title of the Government. On the other hand, it has been contended that the High Court is empowered under its extraordinary jurisdiction under Article 226 of the Constitution to widen or limit the parameters of any controversy it is dealing with. It is asserted that when the High Court chose to examine the entire matter inclusive of the factual side, the State without demur participated in it and it cannot now question the discretion or jurisdiction of the High Court when a decision has gone against it. Otherwise also, it has been countered that the State has no explanation to the documents in which the land in dispute was shown to be in private ownership and not in State ownership.

Having heard learned counsel on both sides on the aspects afore-focused, we find that the High Court was perfectly justified in going into the question of ownership as that was a jurisdictional question on the basis of which alone proceedings under Section 7 of the Act could be initiated. The High Court having done so and the appellant-State having participated in the enquiry, it is futile for it to be contending that the High Court travelled beyond its jurisdiction. Otherwise, on merit of the matter regarding ownership, nothing has been suggested to us whereupon we could be persuaded to take a view different than the one taken by the High Court. We thus find no reason to interfere in the order of the High Court……"

80. In **Shama Prashant Raje**[12], the Supreme Court held thus:-

"…….The learned Single Judge by judgment dated 26-2-1998 came to the conclusion that the appellate authority committed error apparent on the face of the order in setting aside the finding of the Controller on the question of habitual default by taking into consideration that a sum of Rs 2000 had been sent by the tenant to the landlord by money order and the said money order was refused.

But notwithstanding the same, on a mere perusal of the order of an inferior tribunal if the High Court comes to a conclusion that such tribunal has committed manifest error by misconstruing certain documents, or the High Court comes to the conclusion that on the materials it is not possible for a reasonable man to come to a conclusion arrived at by the inferior tribunal or the inferior tribunal has ignored to take into consideration certain relevant materials or has taken into consideration certain materials which are not admissible, then the High Court will be fully justified in interfering with the findings of the inferior tribunal…."

81. On the other hand in **D.L.F. Housing Construction (P) Ltd.**[16], the Supreme Court held thus:-

"……In our opinion, in a case where the basic facts are disputed, and complicated questions of law and fact depending on evidence are involved the writ court is not the proper forum for seeking relief. The right course for the High Court to follow was to dismiss the writ petition on this preliminary ground, without entering upon the merits of the case. In the absence of firm and adequate factual foundation, it was hazardous to embark upon a determination of the points involved. On this short ground while setting aside the findings of the High Court, we would dismiss both the writ petition and the appeal with costs. The appellants may, if so advised, seek their remedy by a regular suit……."

82. In **M.V. Vyavsaya & Co.,**[17], the Supreme Court held thus:-

"…….It has been repeatedly held by this Court that the power of the High Court under Article 226 of the Constitution is not akin to appellate power. It is a supervisory power. While exercising this power, the court does not go into the merits of the decision taken by the authorities concerned but only ensures that the decision is arrived at in accordance with the procedure prescribed by law and in accordance with the principles of natural justice wherever applicable. Further, where there are disputed questions of fact, the High Court does not normally go into or adjudicate upon the disputed questions of fact……."

83. I n **President, Poornathrayisha Seva Sangham v. K. Thilakan Kavenal**[23], the Supreme Court held thus:

"…..Above being the position, we feel that nothing further remains to be done in this appeal except noticing that certain observations made, as regards the functioning of the appellant Society and its credibility were unnecessary. For the purpose of adjudication of the dispute before the High Court which only related to the permission granted to use the Oottupura, other observations and views expressed by the Division Bench are, therefore, treated as inoperative. Since disputed facts were involved, the High Court should not have gone into them even in respect of the primary grievances of the writ petitioner……."

84. In **Industrial Finance Corporation of India Limited, New Delhi Vs. Sree Krishna Oil Complex Limited, Hyderabad**[24], a Division bench of this Court held thus:

"……..As is well known, one of the grounds against the exercise of discretionary power vested in the High Court under Art. 226 of the Constitution is where disputed facts have to be investigated. The reason is that when such dispute exists between the parties, the right claimed by the petitioner is not capable of being established in the summary proceedings

under Art. 226 of the Constitution, because, it requires a detailed examination of the evidence as may be had in a suit. The primary object of Art. 226 is the enforcement of an established right and not the establishment of a right or title. A petition under Art.226 of the Constitution cannot be converted into a suit to resolve the factual controversies. The same principle has been extended even to mixed questions of fact and law by Courts. After perusing the pleadings of the parties, it is not possible for us to conclusively record findings on the factual pleas urged by the parties. It requires investigation of disputed facts by permitting the parties to lead evidence and it also involves appreciation of evidence that may be so led by the parties. This Court cannot be converted into a trial Court in exercising its power under Art. 226 of the Constitution, particularly when the party approaching this Court under Art.226 can work out his/its remedy by approaching a competent and jurisdictional civil Court. The disputed questions that arise for decision in the instant case cannot be resolved on the basis of the pleadings and the documents produced by the parties, and in fact it requires further investigation into the disputed facts.

> In general, a disputed question of fact is not investigated in a proceeding under Art. 226 of the Constitution, particularly where an alternative efficacious remedy is available and where no effective and conclusive decision cannot be taken on the basis of the pleadings and the documents filed in the writ petition. This position is well settled by the Judgments in Union of India Vs. Ghas Mohammad: AIR 1961 SC 1526, Bokaro and Ramgur Ltd. Vs. State of Bihar: AI 1963 SC 516, Moti Das, Mohant Vs. Sahi, S.P.: AIR 1959 SC 942, Principal, Industrial Training Institute, Gahazipur Vs. Abhay Kumar Srivastava: 1995 Supp. (4) SCC 617, U.P. State Mineral Development Corporation Vs. K.C.P. Sinha: (1996) 5 SCC 111, State of M.P. Vs. M.V. Vyavsaya: AIR 1997 SC 993, State Bank of India Vs. State Bank of India Canteen Employees' Union: (1998) 5 SCC 74, Ram Badan Rai Vs. Union of India: AIR 1999 SC 166, Chairman, Grid Corporation of Orissa Ltd. Vs. Sukamani Das: (1999)7 SCC 298, Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers' Union: AIR 2000 SC 1508, Factory Manager CIMMCO Wagon Factory Vs. Virendra Kumar Sharma: (2000) 6 SCC 554 and Jai Singh Vs. Union of India: AIR 1977 SC 898 to cite a few. Further, in Union of India Vs. Verma T.R.: AIR 1957 SC 882 and Burmah Construction Co. Vs. State of Orissa: AIR 1962 SC 1320, the Supreme Court held that claims arising out of breach of contract or tort where it becomes necessary to investigate into the disputed questions cannot be entertained under Art. 226of the Constitution. In Maheswar Prasad Srivastava Vs.SureshSingh: AIR 1976 SC 1766 the Apex Court; held that the determination made by an expert body, in the absence of mala fides, cannot be interfered by exercising the power under Art. 226 of the Constitution. Since the factual pleas put forth by the parties to the writ petition do involve; investigation of disputed facts and recording findings on pure questions of fact, it is appropriate that this Court should; have declined to entertain the writ petition……..”

85. In **Revenue Divisional Officer, East, Ranga Reddy Dist. Vs. Kasula Sathaiah**[25], the Division bench of this Court held as follows:

"…….We find some force in the contention of the learned Government Pleader. It is trite that but for the so called assignment patta in Form No.G alleged to have been issued by the revenue authorities, the writ petitioners would not be entitled to seek the kind of relief they have sought in the writ petition. Since the very validity of the said document is contested by the State authorities terming it as a concocted document, it becomes necessary for the Court to decide the factual controversy as to whether the said document is the real one issued by the competent revenue authority or concocted by the writ petitioners for the clandestine purpose. The said controversy being purely factual, it is not proper for the Court to take up investigation of such disputed fact and record finding.

It is quite often held and reiterated by the Constitutional Courts that while exercising the power under Article 226 by way of summary proceedings, the Court should not take up resolution of factual controversies and leave the parties; to work out other legal remedies available to them. In order to resolve the question noticed above, it becomes necessary for the Court or the revenue authorities to permit the parties to lead evidence in support of their respective case……."

86. In **Hindustan Petroleum Corporation Limited Vs. Ali Jafaar**[26], the Division bench of this Court held as follows :

"…The question is not of jurisdiction but one of exercise of discretion in the given facts and circumstances of the case. The High Court's jurisdiction under Article 226 of the Constitution of India to go into even disputed questions of facts can never be disputed. The Court in each case has to decide itself as to whether the facts pleaded are of such nature, which can be gone into by the Court in summary proceeding under Article 226 of the Constitution of India.

We are required to bear in mind that the plenary right of the High Court to issue writs in exercise of its jurisdiction under Article 226 of the Constitution of India, will not normally be exercised by the Court to the exclusion of alternative and effective remedies available unless the impugned action of the State or its instrumentality is so arbitrary and unreasonable so as to violate the guaranteed constitutional rights or for other valid and legitimate reasons, for which the Court may consider it necessary to exercise its jurisdiction.

Suffice it to hold that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India, normally cannot entertain writ petitions where the dispute raised lies in the realm of private law field for the reason that enquiry into such dispute may involve adjudication of disputed questions

of facts for which purposes the proceedings under Article 226 of the Constitution of India are ill suited……"

87. In **Uttar Pradesh State Road Transport Corporation, rep. by its Managing Director, Lucknow Vs. M/s. K.L. Hi-Tech Secure Print Ltd., rep. by its Managing Director**[27], the Division Bench of this Court held as follows:

"…….Such complex disputed questions of fact cannot satisfactorily be resolved in a proceeding under Art. 226 of the Constitution of India. It is not as if in appropriate cases, the Court has no jurisdiction to entertain the writ petition involving disputed questions of fact and there is absolutely a bar for entertaining the writ petition. The question is one of exercise of discretion and not of any lack of jurisdiction. This Court will not normally exercise its jurisdiction where number of complex nature of facts and disputes are involved, which may for their determination require evidence to let in by the parties to the dispute……."

88. While this Court, in proceedings under Article 226 of the Constitution of India, is not precluded from examining questions of fact, where complex questions of fact are to be adjudicated, requiring evidence to be taken, this court would not, normally, exercise its discretionary jurisdiction, under Article 226 of the Constitution of India, if it were of the view that the petitioner was better relegated to the remedy of a suit before a civil court of competent jurisdiction.

DISCRETION UNDER ARTICLE 226 IS, NORMALLY, NOT EXERCISED TO ADJUDICATE DISPUTED QUESTIONS OF TITLE:

89. The dispute in the present case is one of title. While the petitioner would claim to be owner of the lands in question, and to

contend that the said lands had been purchased by their ancestors 80 years ago, learned Special Government Pleader would refer to the counter affidavit wherein the respondents would state that they had perfected their title to these lands since these lands are forest lands and had been in continuous possession of the Government ever since 1957-1959. Whether possession in a particular case is adverse or not depends upon the particular circumstances in the case and is mainly a question of fact (**State of A.P. v. Kattubadi Faquibi**[28]). The fact that the government can also acquire title, to property, by adverse possession is not in dispute. On a specific query from this Court, whether the government could also claim adverse possession, Sri Challa Sitaramaiah, learned Senior Counsel, would submit that while the government could claim adverse possession, there must be sufficient pleadings in this regard to the effect that possession of the government is peaceful, open and continuous and is adverse to the petitioner.

90. The petitioner's contention that the government had accepted her claim to these lands, while issuing G.O.Ms.No.439 dated 13.03.1957, and could not therefore either take a contrary stand subsequently or lay claim to these lands and deprive her of the property, cannot be accepted. Since the jurisdiction of the Board of Revenue under Section 7 and that of the government under Section 3 of the Estates Abolition Act is limited to a determination as to whether the lands claimed by the petitioner fall within the "Estate" or not, exclusion of the forest lands of Yerranagavaripalli and Paimash Nos.120 to 139 of Penubalakala hamlet, under G.O.Ms.No.439 dated 13.03.1957, would only amount to the Board of revenue and the Government holding that these lands do not fall

within the “Estate” and nothing more. In issuing G.O.Ms.No.439 dated 13.03.1957, the Government has neither conferred nor could it have conferred title over these lands on the petitioner. Nor can the said G.O. be said to be a tacit admission by the government that the petitioner is the owner of these lands. Even otherwise the claim of the government to have perfected its title by adverse possession, on account of its continuous possession over these lands from 1959 onwards, is subsequent to G.O.Ms.No.439 dated 13.03.1957. The mere fact that no one else has made any claim to these forest lands would not enure to the petitioner’s benefit. The fact, that the joint inspection revealed that nearly an extent of 100 Acres outside the reserve forest is under encroachment by a large number of persons, cannot be ignored. Neither G.O.Ms.No.1472 dated 29.03.1972 nor the letter of the officials of the forest department stating that these lands are situated outside the reserve forest confer any right or title on the petitioner over these lands. G.O.Ms.No.439 dated 13.03.1957 and G.O.Ms.No.1472 dated 29.03.1972 merely exclude the forests of Yerranagavaripalli and Paimash Nos. 120 to 139 of Penubalakala from the “Estate” under the Estates Abolition Act and reserve forest under Section 4(1) of the A.P. Forest Act. Except placing reliance on G.O.Ms.No.439 dated 13.03.1957 and G.O.Ms.No.1472 dated 29.03.1972, no other material is placed by the petitioner before this Court to establish her title over these lands.

91. It is well settled by a catena of judgments that disputed questions of title are not, normally, examined in proceedings under Article 226 of the Constitution of India. Suffice, if some of these judgments are taken note of.

92. In **Sohan Lal v. Union of India**[29], the Supreme Court held thus:-

"……..**We do not propose to enquire into the merits of the rival claims of title to the property in dispute set up by the appellant and Jagan Nath. If we were to do so, we would be entering into a field of investigation which is more appropriate for a civil court in a properly constituted suit to do rather than for a Court exercising the prerogative of issuing writs. There are questions of fact and law which are in dispute requiring determination before the respective claims of the parties to this appeal can be decided. Before the property in dispute can be restored to Jagan Nath it will be necessary to declare that he had title in that property and was entitled to recover possession of it. This would in effect amount to passing a decree in his favour**. In the circumstances to be mentioned hereafter, it is a matter for serious consideration whether in proceedings under Article 226 of the Constitution such a declaration ought to be made and restoration of the property to Jagan Nath be ordered……..." (emphasis supplied).

93. In **New Satgram Engineering Works v. Union of India**[30], the Supreme Court held thus:-

"…….**Where there is a dispute as to whether a particular property vests or not, the dispute undoubtedly is a civil dispute and must, therefore, be resolved by a suit**……"(emphasis supplied)

94. In **Parvatibai Subhanrao Nalawade (Smt) v. Anwarali Hasanali Makani**[31], the Supreme Court held thus:-

"…….**Before closing this judgment we would like to emphasise that in cases relating to immovable properties which are governed by the ordinary civil law the High Court should not exercise its special jurisdiction under the Constitution unless the circumstances are exceptional**……" (emphasis supplied).

95. In **Mohan Pandey v. Usha Rani Rajgaria (Smt.),**[32], the Supreme Court held thus:-

"…….**It has repeatedly been held by this Court as also by various High Courts that a regular suit is the appropriate remedy for settlement of disputes relating to property rights between private persons and that the remedy under Article 226 of the Constitution shall not be available except where violation of some statutory duty on the part of a statutory authority is alleged**. And in such a case, the Court will issue appropriate

direction to the authority concerned. If the real grievance of the respondent is against the initiation of criminal proceedings, and the orders passed and steps taken thereon, she must avail of the remedy under the general law including the Criminal Procedure Code. **The High Court cannot allow the constitutional jurisdiction to be used for deciding disputes, for which remedies, under the general law, civil or criminal, are available. It is not intended to replace the ordinary remedies by way of a suit or application available to a litigant. The jurisdiction is special and extraordinary and should not be exercised casually or lightly**....." (emphasis supplied)

96. In **State of Rajasthan v. Bhawani Singh**[33], the Supreme Court held thus:-

".....Having heard the counsel for the parties, we are of the opinion, that the writ petition was misconceived insofar as it asked for, in effect, a declaration of writ petitioner's title to the said plot. It is evident from the facts stated hereinabove that the title of the writ petitioner is very much in dispute. **Disputed question relating to title cannot be satisfactorily gone into or adjudicated in a writ petition**....." (emphasis supplied)

97. In **Union of India Vs. Mohammed Mohiuddin**[34], the Division bench of this Court held thus:-

"……..**With regard to question of title, it is well settled that highly disputed questions of title cannot be entertained and adjudicated in a petition under Article 226 of the Constitution of India**....." (emphasis supplied)

98. In **Syed Kazim Bahadur Vs. District Collector, Rangareddy District**[35], the Division bench of this Court held thus:-

".....It is quite often said and reiterated that primarily Article 226 is not meant to establish the rights but it is meant to enforce the established rights. **The dispute regarding the title and possession cannot be effectively resolved in a summary proceeding under Article 226 of the Constitution only on the basis of affidavits and counter-affidavits without tendering witnesses for cross-examination. The appellant is having an effective, alternative, comprehensive remedy by way of private law review, for declaration, injunction and damages before the Civil Court**.

We do not find any extraordinary situation or circumstance which could justify the appellant/petitioner to rush to this Court under Article 226 without resorting to such effective and comprehensive legal remedies. For all these reasons, we are not inclined to interfere with the order made by the

learned single Judge….." (emphasis supplied).

99. In **Lambadi Pedda Bhadru Vs. Mohd. Ali Hussain**[36], the Division bench of this Court held thus:-

"……**We are in complete agreement with the submission made by the learned Advocate General that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot go into the intricate questions relating to property rights**. The learned Single Judge relying upon an order purported to have been passed by the then acting Tahsildar, practically declared the title of the respondents-writ petitioners and their predecessor-in-title in respect of the lands in question. Such a course is not permissible in law. **A regular suit is the appropriate remedy for settlement of disputes relating to the property rights. The remedy under Article 226 of the Constitution of India, which is summary in nature, is not available for such purposes. It is dangerous to grant declaration of title in respect of immovable properties in a proceeding under Article 226 of the Constitution of India, for which remedies under general law are available. Disputed questions relating to title cannot be satisfactorily gone into or adjudicated in a writ petition**……" (emphasis supplied).

100. In **Union of India rep. by its Secretary, Ministry of Defence, ix) New Delhi Vs. S.M. Hussain Rasheed**[37], the Division bench of this Court held thus:-

"…….**It needs no restatement at our hands that where there is a dispute as to whether a particular property vets or not, in the State or in any private individual, the dispute undoubtedly is a civil dispute and must, therefore, be resolved by a suit and not in a proceeding under Article 226 of the Constitution of India. It is well-recognised principle of law that a regular suit is the appropriate remedy for settlement of disputes relating to property rights between the parties**. The remedy under Article 226 shall not be available except where violation of some statutory duty on the part of a statutory authority is alleged and in such a case, the Court will issue appropriate direction to the authority concerned. "The High Court cannot allow the constitutional jurisdiction to be used for deciding disputes, for which remedies, under the general law, civil or criminal, are available. It is not intended to replace the ordinary remedies by way of a suit or application available to a litigant. The jurisdiction is special and extraordinary and should not be exercised casually or lightly". (See for the proposition: New Satgram Engineering Works Vs. Union of India: (1980) 4 SCC 570, Mohan Pandey Vs. Usha RaniRajgaria: (1992) 4 SCC 61 and Lambadi Pedda Bhadru Vs. Mohd. Ali Hussain: 2003(4) ALT 611 (D.B.)……." (emphasis supplied)

101. In **Prince Shahamat Ali Khan v. Sultan-ul-Uloom Education Society**[38], the Division bench of this Court held thus:-

"……**It is fairly well settled by a catena of decisions that such disputed questions of title cannot be gone into by this Court in exercise of its jurisdiction under Article 226 of the Constitution. It is well recognized principle of law that a regular suit is the appropriate remedy for settlement of disputes relating to property rights between the parties.** The remedy under Article 226 shall not be available except where violation of some statutory duty on the part of a statutory authority is allowed and in such a case the court will issue appropriate directions to the authority concerned. The High Court cannot allow the constitutional jurisdiction to be used for deciding disputes, for which remedies, under general law, civil or criminal are available. It is not intended to replace the ordinary remedies by way of suit or application available to a litigant….." (emphasis supplied)

102. In **Raidurg Co-operative House Building Society Limited, Raidurg Vs. Government of A.P**[39], this Court held thus:-

"……..It is axiomatic that while exercising the power of judicial review under Article 226 of the Constitution, this Court would not decide dispute questions of title [See State of Rajasthan v. Bhawani Singh (AIR 1992 SC 1018) Mohan Pandey v. Usha Rani Rajgaria (AIR 993 SC 1225) and Parvatibai Subhanrao Nalawada v. Anwarali Hasanali Makani (AIR 1992 SC 1780)]. Whether or not a person has title to the land? Whether or not the Jagirdar validly granted patta in favour of Chandni Begum? And whether or not the persons have been in possession of the land, are disputed questions of fact. When the Government contends that the land in question is rocky terrain and not fit for cultivation and has been continuously in possession of the land, is it permissible for this Court to go into the question of title? **Though the learned Counsel for the petitioners contends that the petitioners are not seeking declaration of title, in my considered opinion, while praying for a writ of certiorari to quash the impugned order, they are, in effect, seeking for declaration of title**. The effect of quashing the orders would be setting at naught the observation of the Government that the land in question is Government poramboke land as per survey and settlement records……

"……**The question of adverse possession cannot be gone into in these proceedings. A person who sets up adverse possession is required to prove the factum that his possession has been open and hostile and adverse to the tile of the real owner and seek a declaration from a Civil Court. In a writ petition, such declaration cannot be given**…..." (emphasis supplied)

103. It is thus well settled that disputed questions of title are not, normally, entertained or adjudicated in proceedings under Article 226 of the Constitution of India. In fact W.P.320 of 1957 filed by the petitioner's husband, the erstwhile zamindar of Punganoor, seeking to have the proceedings in G.O.Ms.No.439 dated 13.03.1957 quashed, was dismissed by this Court directing that the petitioner should seek his remedies in a properly constituted suit.

104. As noted earlier it is the specific case of the respondents that an extent of 1605-70 Acres in Paimash Nos.120 to 139 correlated to Sy.No.211, and an extent of Ac.27-65 in Sy.No.210 of Peddakapalli village, are covered by forests, are shown in the revenue records as assessed waste from the time of survey in 1957-59 and since the government is in continuous possession of these lands it has perfected its title by adverse possession. According to the respondents, the joint inspection conducted recently by a team of officials of the forest department and revenue officials recorded that, except an extent of nearly 100.00 acres, the remaining extent of 1175-00 acres in Paimash Nos.120 to 139 of Penubalakala hamlet fall within the reserve forest and even the extent of nearly 100 acres, located outside the reserve forest, is under encroachment by a large number of persons.

105. Whether the petitioner is the owner of the forest lands in Yerranagavaripalle and Paimash Nos.120 to 139 of Penubalakala hamlet? Whether these lands are forest lands and in continuous possession of the government adverse to the petitioner ever since 1957-1959? Whether the government has perfected its title by

adverse possession? and other such questions can be elaborately examined on the basis of evidence, both oral and documentary, and are matters eminently suited for adjudication in a suit before the Civil Court of competent jurisdiction and not in proceedings under Article 226 of the Constitution of India.

106. The writ petition is dismissed leaving it open to the petitioner to agitate her grievance in a suit before the Civil Court of competent jurisdiction. Since the writ petition is dismissed not on merits but on the ground that this court, in proceedings under Article 226 of the Constitution of India, would not, normally, adjudicate disputed questions of title, it is wholly unnecessary for this Court to examine the respondent's contention that as the petitioner did not challenge the order of the Director of Settlements dated 08.04.1976 before the Commissioner or the order of the Commissioner before this Court, she had abandoned her rights and her claim over these lands after 1972, that the petitioner having permitted the proceedings of the Director of Settlements to attain finality had acquiesced thereto, that the present writ petition, claiming ownership of these lands four decades after G.O.Ms.No.439 dated 13.03.1957 was issued, is belated and is liable to be dismissed on the ground of laches, etc and these contentions are therefore left open for adjudication, if need be, in appropriate proceedings.

107. The writ petition fails and is accordingly dismissed. However, in the circumstances, without costs.

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Date: .06.2006 RAMESH RANGANATHAN, J

Note: L.R. copy to be marked

B/o

MRKR/ASP

[1] 1997(2) SCC 267

[2] AIR 1970 SC 1975

[3] AIR 1967 SC 1140

[4] AIR 1980 SC 91

[5] (2002)1 ALT 466

[6] (2003)1 ALT 3

[7] AIR 1967 SC 1269

[8] 1974(2) SCC 706

[9] 1990(1) SCC 440

[10] AIR 1993 SC 880

[11] 1998(8) SCC 749

[12] 2000(7) SCC 522

[13] (1991)1 SCC 308

[14] (1999)1 SCC 488

[15] 1991 (Suppl) 2 SCC 228

[16] (1976)3 SCC 160

[17] (1997)1 SCC 156

[18] (1989)3 SCC 612

[19] (1996)6 SCC 223

[20] (1996)11 SCC 257

[21] (1998)2 ALT 623

[22] (1964)2 SCC 706

[23] (2005)2 SCC 689

[24] (2002)3 ALT 168

[25] (2002)3 ALT 389

[26] (2004)3 ALT 371

[27] (2004)4 ALT 498

[28] AIR 1962 AP 518

[29] 1957 SCR 738

[30] (1980)4 SCC 570

[31] (1992)1 SCC 414

[32] (1992)4 SCC 61

[33] 1993(Suppl)1 SCC 306

[34] (2000)6 ALD 376

[35] (2002)3 ALT 739

[36] (2003)4 ALT 611

[37] (2003)5 ALT 143

[38] (2003)6 ALT 307

[39] (2004)3 ALT 221